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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 539

THE OHIO BELL TELEPHONE COMPANY,
Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO.

STATEMENT AS TO JURISDICTION.

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THE OHIO BELL TELEPHONE COMPANY,
Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF OHIO,
Appellee.

APPEAL FROM THE SUPREME COURT OF OHIO.

JURISDICTIONAL STATEMENT.

This is an appeal from the final judgment of the Supreme Court of Ohio in Consolidated Cause No. 25065 on the docket of said court, entitled:

> "The Ohio Bell Telephone Company, Plaintiff in Error, *vs.* The Public Utilities Commission of Ohio, Defendant in Error."

Said cause was a proceeding to review directly in that court (pursuant to Section 544, *et seq.* of the General Code of Ohio) orders of The Public Utilities Commission of Ohio dated January 16, March 1, July 5 and 9, and September

6, 1934. These several orders were entered by the Commission in a company-wide case instituted by the Commission and involving the determination of (a) the fair value of appellant's intrastate telephone property in Ohio for 1925 and subsequent years, (b) the reasonableness of its rates, and (c) whether, in separate rate cases pending before the Commission and consolidated by it with the said company-wide case, appellant should be required to refund portions of certain increased rates put into effect by appellant in certain exchanges and in the toll system under separate bonds in each such case, in accordance with the Robinson and Pence laws (108 Ohio Laws 1094, 110 Ohio Laws 366).

Appellant prosecuted separate error proceedings in the Supreme Court of Ohio to review the several orders of the Commission, such proceedings being numbered 24694, 24695, 25023 and 25065 on the docket of that court. These cases were consolidated by the court into the instant case, No. 25065, heard on a single record, briefed and argued as one cause and decided by a single opinion and judgment.

The opinion is reported in 131 Ohio State Reports 539, and a copy attached hereto as Appendix "A."

By said judgment the Supreme Court of Ohio affirmed, as against appellant's claim of denial of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, the orders of the Commission, determining for each of the years 1925 to 1933, inclusive, (a) the value of appellant's intrastate property, (b) its net income from its intrastate business, and (c) the extent to which such net income was excessive; (d) refusing to approve for the year 1934 and thereafter appellant's then effective rates, notwithstanding the Commission found that for the year 1933, the last year under inquiry, said rates produced no more than the sum found

by the Commission to be fair and reasonable; and (e) ordering refunds for 1925 to 1932, inclusive, of $11,832,264 with interest, produced by rates collected under bond.

(a) Date of Judgment.

The date of the judgment sought to be reviewed was July 22, 1936; application for rehearing, duly filed on August 3, 1936, was overruled on October 7, 1936, and thereupon, to-wit, on October 7, 1936, said judgment became final.

(b) Date of Application for Appeal to the Supreme Court of the United States.

Petition for appeal to this Court was presented to the Chief Justice of the Supreme Court of Ohio on October 14, 1936.

(c) Statutory Provisions Giving Jurisdiction.

This Court has jurisdiction of this cause under Judicial Code Section 237 as amended (28 U. S. C. A. 344) which provides:

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and

may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ,"

and 45 Stat. 54, January 31, 1928, c. 14, Sec. 1, 28 U. S. C. A. 861a and 45 Stat. 466, April 26, 1928, c. 440, 28 U. S. C. A. 861b, substituting appeal for the writ of error.

(d) **Statute, Validity of Which is Involved.**

The statute of Ohio, the validity of which is involved, consists of the orders* of the Public Utilities Commission of Ohio of January 16, March 1, July 5 and 9, and September 6, 1934.

None of the orders is published, but the Commission's opinion and finding of January 16, 1934, appears in 2 P. U. R. (N. S.) 113, and is attached hereto, marked Appendix "B."

(e) **Pertinent Provisions of the Commission's Orders.**

(1) The Commission valued appellant's property used in intrastate service in Ohio as of June 30, 1925, "the date certain," by separate classes of plant at the total sum of $93,707,488; and for each of the years 1926 to 1933, inclusive, by the application of a price trend percentage to the total value found for the property for the preceding year, plus net additions, at the following sums:

1926	$101,767,774
1927	111,036,522
1928	122,417,735
1929	134,765,576

* Being legislative in character they are "statutes" within the meaning of Section 237 of the Judicial Code. *Sultan Ry. Co.* v. *Department of Labor*, 277 U. S. 135; *Hamilton* v. *Regents*, 293 U. S. 245.

1930	145,683,047
1931	145,271,663
1932	133,625,655
1933	126,250,206

(2) The values so fixed did not for any of said years include any allowance for construction work in progress averaging $3,000,000 annually, or for going value, nor did the value for 1925 include any allowance for parcels of useful real estate of the value of more than $500,000.

(3) The Commission found the existing depreciation of the property as of June 30, 1925, to be $14,226,709, which was 13.18% of the reproduction cost new of the depreciable property as fixed by the Commission.

(4) The Commission found the amount of appellant's intrastate revenues (not disputed) and the amount of its allowable expenses. In arriving at appellant's allowable expenses the Commission disallowed large portions of appellant's annual expense of depreciation which was based upon the service life and salvage of appellant's property. Instead the Commission purported to base the annual expense of depreciation upon appellant's retirement experience, but for the years 1925 to 1933, inclusive, allowed $8,067,266 less than appellant's net loss on account of plant retired. It also disallowed $2,800,000 of the payments made by appellant for the years 1925 to 1932, inclusive, to the American Telephone and Telegraph Company on account of license contract services. From the foregoing the Commission determined appellant's net income from its intrastate business for each year and computed therefrom the resulting rate of return upon the value found by the Commission.

(5) The Commission fixed as the reasonable rates of return: 7% for the years 1925 to 1929, inclusive, 6½% for

1930 and 1931 and 5½% for 1932 and 1933, and determined that appellant had realized net earnings in excess of a fair and reasonable return in each of said years, except the final year 1933, said excess amounting in the aggregate to more than $13,000,000.

(6) By the use of an accounting apportionment, the Commission determined that $11,832,264 of such excess earnings were subject to refund, determined the amount of refund for each bonded exchange for 1925 to 1932, inclusive, and for the toll system for 1925 and 1926, and ordered appellant to make refunds accordingly with interest.

(7) The Commission found that appellant was earning no more than a fair rate of return for the year 1933 at its then effective rates. It refused appellant's requests to approve such rates for the future, or, in the alternative, to afford appellant a hearing as to the reasonableness of its rates for the year 1934.

(f) Presentation of Federal Questions to Commission and Court.

Appellant sought the correction of each of the findings and orders of the Commission, first, by appropriate and timely requests, protests and applications to the Commission for a rehearing, asserting therein specifically that each of said findings and orders was erroneous, arbitrary and confiscatory in effect and deprived appellant of its property without due process of law, and denied to appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and second, by its said petitions in error to the Supreme Court of Ohio, upon the same grounds, including

specifically the constitutional grounds stated; all as more particularly hereinafter shown.

I. Price Trends: Undisclosed Information.

In the Commission's order of January 16, 1934, it appeared for the first time that the Commission had fixed the value of appellant's intrastate property for each of the years 1926 to 1933, inclusive, by means of a price trend percentage applied to the total value found for the property for the preceding year, plus net additions. Such percentages were based upon information undisclosed to appellant, not offered in evidence, and as to which appellant was denied opportunity to examine or rebut.

On February 6, 1934, in appellant's protest and application for rehearing with respect to said order, it challenged the Commission's right to use such undisclosed price trend information and, after setting out the facts, made the following averment:

> "The alleged facts so considered did not come from any official sources which the Commission had the right to notice judicially. They were not published by any public authority, governmental or State. They were not introduced in evidence, and the respondent had no opportunity to examine or to cross-examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of respondent's property. By reason of these facts the Commission denied the respondent a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing. The order of the Commission based upon such claimed proof deprives the respondent of its property without due process of law and denies to the respondent the equal protection of the laws in

violation of the Fourteenth Amendment to the Constitution of the United States."

(Exhibit F, p. 167*).

This and appellant's subsequent protests and applications for rehearing (Exhibit I, pp. 193-195; Exhibit P, pp. 265, 266-269; Exhibit T, p. 327, at pp. 331-333) were denied by the Commission.

(Exhibit H, pp. 187-188, Order of March 9, 1934; Exhibit R, same pp. 311-312, 316; Order of October 19, 1934.)

Each alleged in substantially the language last above quoted that the orders of the Commission with respect to values for the years 1926 and thereafter and the refunds based thereon constituted a denial to appellant of due process and of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

On February 17, July 31 and September 25, 1934, respectively, appellant filed with the Commission written requests for an opportunity to examine and rebut such undisclosed information.

(Exhibit G, pp. 185, 186; Exhibit L, p. 231, at pp. 235-6; Exhibit S, p. 321, at pp. 324-5.)

These requests were denied by the Commission.

(Exhibit H, pp. 187-188; Exhibit R, pp. 311, 312 and 316; Order of September 27, 1934.)

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*This and other exhibits hereinafter referred to are appended to the petition in error in Cause No. 25065. The references are so made because the case was not heard by the Supreme Court of Ohio upon a printed record but upon the original transcript of the proceedings before the Commission.

In each petition in error this action of the Commission and its denial of appellant's requests in respect of the same were similarly challenged.

(Petition in Error No. 25065, Appendix A hereto, pp. 14-16, 34-35, 37; Petition in Error No. 24694, pp. 6-8, 34; Petition in Error No. 24695, pp. 7-9, 20; Petition in Error No. 25023, pp. 8-11, 50.)

The petition in error in Case No. 25065 contains the following averment:

"By reason of these facts the Commission denied plaintiff in error a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing.

"On February 17, July 31 and September 25, 1934, plaintiff in error filed the written requests heretofore referred to, each of which in specific terms asked the Commission to disclose the evidence on which it had arrived at the price trends above referred to and had fixed the value of plaintiff in error's intrastate property. These requests were all denied. • • •

"The findings of value and the orders of the Commission fixing the amount of the refunds, aggregating $11,832,264, which were necessarily based upon such claimed proof, deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety."

(Petition in Error No. 25065, Appendix A hereto, pp. 15-16.)

II. Property Values, Expenses and Resulting Refunds

With respect to each of the Commission's orders on these subjects appellant duly filed with the Commission its protests and applications for rehearing (Exhibit C, p. 33, at

pp. 34-37; Exhibit F, p. 163, at pp. 164-171, 175-183; Exhibit I, p. 193, at pp. 201-221; Exhibit P, p. 265, at pp. 280-305, and Exhibit T, p. 327, at pp. 350-372, 379-380), each of which was overruled.

(Exhibit E, p. 153, 154; Exhibit H, p. 187; Exhibit R, p. 311, 312, 316; Order of March 9, 1934; Order of October 19, 1934.)

In each such protest and application appellant specifically challenged the validity of the several findings and orders of the Commission in the following, among other, respects: The undervaluation of appellant's property, including the elimination of useful real estate, the Commission's disallowance of stated undistributed construction costs, the elimination of going value, the elimination of property in proces of construction, and the overstatement of the depreciation existing in the property; the disallowance of the expense of depreciation; the disallowance of license contract payments; and the refunds ordered.

Specifically, in appellant's protest and application for rehearing filed October 1, 1934, directed to the Commission's order of September 6, 1934, appellant averred that in each and all of said respects the said findings and orders were

> "confiscatory and will, if enforced, result in the confiscation of respondent's property and will deprive it of its property without due process of law • • • in violation of the Fourteenth Amendment of the Constitution of the United States."

(Exhibit T, p. 327, at p. 380.)

In each of appellant's other protests and applications for rehearing the validity of the Commission's action was challenged in substantially the same manner.

(Exhibits C, F, I, P and T, pp. 37, 182, 220, 304 and 380.)

In the Supreme Court of Ohio appellant, in its petition in error No. 25065, challenged the validity of each of said findings, denials and orders in each of said respects as effecting denial to appellant of due process of law under the Fourteenth Amendment.

(Petition in Error 25065, included in Appendix A hereto, pp. 19-30, 37.)

In each of its other petitions in error appellant similarly challenged said successive orders in said respects as depriving appellant of due process of law under the Fourteenth Amendment.

(Petition in Error No. 24694, pp. 14-34; No. 24695, pp. 11-20; No. 25023, pp. 26-43, 45-50.)

III. Refunds Ordered Arbitrarily

The Commission's order of September 6, 1934 fixed the amount of refunds at $11,832,264. This amount was arrived at by a method of apportionment, after the Commission had refused to grant appellant's requests for hearings with respect to its property value and net income in the bond cases.

The method was employed in the orders of July 5 and September 6, 1934. In its protests and applications for rehearing directed to said orders appellant challenged the Commission's use of said apportionment method and the refunds resulting therefrom as depriving appellant of its property without due process of law and denying it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

In its protest and application for rehearing directed to the Commission's order of September 6, 1934, it is averred:

"(a) Instead of considering the fair value of respondent's property and net earnings separately by

exchanges and separately for its toll system, the Commission, in making said apportionments and allocation, unlawfully and arbitrarily used and applied wholly irrelevant accounting methods and made wholly irrelevant calculations, having no relation to any property values and net earnings. It was impossible lawfully to make said apportionments and allocation by any accounting methods and calculations or to order any refunds based thereupon.

"(b) The Commission's method employed in making said apportionments and allocation was wholly arbitrary and not based upon any evidence in the case."

The protest and application for rehearing further specifically averred that the use of such apportionment method deprived respondent of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

(Exhibit T, p. 327, at pp. 342-346.)

The said action of the Commission was similarly challenged as depriving appellant of due process of law and denying it the equal protection of the laws in appellant's protest and application for rehearing directed to the order of the Commission of July 5, 1934.

(Exhibit P, p. 265, at pp. 276-277.)

Said protests and applications for rehearing were overruled.

(Exhibit R, pp. 311, 312, 316; Order of October 19, 1934.)

In its petition in error in the Supreme Court of Ohio directed to the Commission's order of September 6, 1934, (Petition in Error No. 25065, Appendix A hereto, pp. 17-19,

25, 34-37) appellant challenged the Commission's use of said apportionment method and the refunds resulting therefrom. It was there averred:

"The Commission erred in making said apportionments and allocation, and in ordering plaintiff in error to make refunds as ordered, in the following respects:

• • • • • • •

"(b) The Commission's method employed in making said apportionments and allocation was erroneous, arbitrary, inapplicable and not based upon any evidence in the case.

• • • • • • •

"(d) In making the apportionment between the protesting and the non-protesting exchanges the Commission included as bonded revenues in each year the total revenues in any exchange in which any rate had been collected pursuant to bond, although substantial portions of such revenues were not collected under bond, thereby erroneously increasing by more than $4,000,000 the refunds required to be made by plaintiff in error.

• • • • • • •

"The action of the Commission with respect to such refunds and the apportionments and allocation upon which they were based deprived plaintiff in error of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States."

(Petition in Error No. 25065, Appendix A, pp. 17-19.)

In its petition in error No. 25023 directed to the order of the Commission of July 5, 1934, the use of said accounting apportionments by the Commission was similarly chal-

lenged as being repugnant to the Fourteenth Amendment to the Constitution of the United States.

(Petition in Error No. 25023, pp. 18-22.)

IV. Judicial Review

The Supreme Court of Ohio, instead of exercising its own independent judgment upon the facts, treated the Commission's findings of fact as conclusive if supported by any evidence. Appellant forthwith challenged this failure of the court to accord to it the judicial review to which it was entitled, setting forth by application for rehearing (pp. 2-3):

> "4. The decision not only deprives plaintiff in error of its property without due process of law and denies it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States in all respects heretofore presented in this consolidated cause, and now hereby reasserted, but also in that, by repeatedly accepting the Commission's findings as conclusive if supported by any evidence, the Court failed to accord plaintiff in error that full judicial review required, in cases such as this, by the Constitution of the United States as interpreted by the Supreme Court."

This application was overruled on October 7, 1936.

V. Refusal to Fix Rates for 1934 and Thereafter

The Commission found that the rates under inquiry produced in 1933, the last year of the period under investigation, no more than a fair return, but it refused to approve the rates then in effect as the just and reasonable rates to be thereafter collected until changed pursuant to law. Therefore, on February 19 and July 31, 1934, appellant filed written requests with the Commission that, in view of said findings it determine that the existing rates were no

more than just and lawful rates to be charged by it for its present and future services until modified in accordance with law, or in the alternative, for a hearing and the right to introduce evidence as to the fair value of its property, its net income and fair rate of return for the year 1934.

(Exhibit G, p. 185; Exhibit M, pp. 237-9.)

These requests the Commission denied.

(Exhibit H, pp. 187-8; Proceedings of Commission, August 1, 1934.)

This failure and refusal of the Commission and its denial of appellant's requests aforesaid were challenged by appellant, in each of its protests and applications for rehearing, as violative of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

(Exhibit F, p. 163, at pp. 174-5, 182-3; Exhibit I, p. 193, at pp. 195-197, 200-201, 218-220; Exhibit P, p. 265, at pp. 269-275, 280, 299-302, 304-305; Exhibit Q, pp. 307, 308; Exhibit T, p. 327, at pp. 333-340, 350, 370, 372-374, 380.)

The denial of said protests and applications for rehearing (Exhibit H, p. 187; Order of March 9, 1934; Exhibit R, p. 311, 312; Order of October 19, 1934) was challenged as violative of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in each petition in error filed in the Supreme Court of Ohio. The averment of the petition in error in Cause No. 25065 (included in Appendix A hereto, pp. 33-34), which is substantially the same as that employed in all said petitions in error, is:

"The Commission erred in its findings and orders in failing to continue the existing rates of plaintiff in

error in effect for the present and future and in overruling the written requests of plaintiff in error so to do filed in this cause on February 17, July 31 and August 29, 1934.

. . . . . .

"The action of the Commission in denying plaintiff in error's request and in requiring it to render future services in Ohio at admittedly confiscatory rates has deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to to the Constitution of the United States."

(Petition in Error No. 24694, pp. 8-10, 13-14, 31, 33 and 34; Petition in Error No. 25023, pp. 11-18, 25, 45-47 and 50.)

. . . . . .

(g) Ruling of State Supreme Court Upon Federal Questions.

The Supreme Court of Ohio affirmed the Commission's findings and orders in every respect, thereby denying every constitutional right asserted by appellant.

(h) The Federal Questions Involved are Substantial.

I. Price Trends: Undisclosed Information.

Appellant has been required to make refunds for each of the years 1926 to 1932 (aggregating more than $10,000,000) upon the basis of a value for each year fixed by means of a price trend percentage applied to the total value found for the property for the preceding year plus net additions. The information upon which the percentages were based was withheld from appellant and appellant was denied the

opportunity to examine or rebut the same. The Commission's action amounted to a denial of due process.

West v. *Chesapeake & Potomac Telephone Co.*, 295 U. S. 662;

West Ohio Gas Co. v. *Commission*, 294 U. S. 63;

Interstate Commerce Commission v. *Louisville, etc., Co.*, 227 U. S. 88, 57 L.Ed. 431, 433.

II. Disallowance of Operating Expenses.

1. *Annual Depreciation Expense.*

The Commission purported to base its allowance for the annual expense of depreciation upon appellant's retirement experience, but used for this purpose only the retirement experience of four years immediately preceding June 30, 1925, and wholly disregarded appellant's proven experience for 1925 to 1933, inclusive, the period under investigation, resulting in an aggregate allowance for that period of $8,067,266 less than appellant's net loss on account of plant retired during that period. Although, under the evidence, appellant's expense of depreciation could not fairly be limited to the amount of its annual retirement loss, even such retirement loss was not compensated for by the Commission's allowance.

Lindheimer v. *Illinois Bell Telephone Co.*, 292 U. S. 151.

2. *License Contract Payments.*

Notwithstanding the cost to the American Telephone and Telegraph Company of rendering the license contract services and the benefits to appellant were of a value greater than appellant's actual payments therefor, and notwithstanding the Commission adopted the method by which appellant arrived at its proper proportion of such cost, the Commission disallowed more than $2,800,000 of appellant's

payments to the American Company for such services from 1925 to 1932, inclusive.

Smith v. *Illinois Bell Tel. Co.*, 282 U. S. 133.

III. Refunds.

Pursuant to the Robinson and Pence Laws appellant made rates effective under separate bonds conditioned in each instance for the repayment by appellant of the portion of the increase finally determined by the Commission to be excessive. The Commission ordered refunds for 1925 to 1932, inclusive, upon a determination that appellant in its intrastate business in the aggregate, including both bonded and non-bonded rates, had received excess earnings. The refunds ordered by the Commission were arrived at by an arbitrary method of apportionment having no relation to property value or net income. The Commission made no finding of property value or net income for any exchange, bonded or non-bonded, or for the bonded exchanges as a group, or for the toll property, or that in any separate exchange or in the total exchange property or in the toll property separately there had been any excess earnings, nor did it find that any rate increased under bond was unreasonable or excessive. This was a denial of due process. The refunds ordered amounted to $11,832,264.

IV. Judicial Review.

Because the Commission's findings and orders were directly reviewed by the Supreme Court of Ohio, it was the duty of that court to exercise its independent judgment as to the facts and law. This it failed to do.

St. Joseph Stockyards Co. v. *United States*, 298 U. S. 38, 80 L. Ed. 679;

Ohio Valley Water Co. v. *Ben Avon*, 253 U. S. 287.

V. Failure to Fix Rates for 1934 and Thereafter.

The Commission found that at its existing rates appellant was earning no more than a fair return for 1933 but overruled appellant's written requests to approve such existing rates as its reasonable rates for 1934 and thereafter or accord appellant a hearing with respect thereto. Thus, the Commission has refused to bring the investigation to an end.

VI. Property Valuation.

In the following fundamental respects the Commission's order, sustained by the court, substantially undervalued appellant's intrastate property:

(a) No fair consideration was given to the cost of the property.

Los Angeles Electric Corp v. *Commission*, 289 U. S. 287.

(b) No fair consideration was given to the cost of reproduction. One basic error in this respect was the Commission's disregard of labor costs experienced by appellant and its predecessor in large, continuous construction projects during the five years preceding June 30, 1925, resulting in an undervaluation as of that date of more than $12,000,000.

Los Angeles Electric Corp. v. *Commission*, 289 U. S. 287, at page 306.

(c) There were excluded from the value as of June 30, 1925, parcels of real estate of the value of more than $500,000 acquired for use in the near future and on some of which telephone buildings were then in process of construction.

Brooklyn Borough Gas Co. v. *Prendergast*, 16 Fed. 2nd 615;

Columbus Gas & Fuel Co. v. *Columbus*, 17 Fed. 2nd 630;

Monroe, etc. Co. v. *Michigan Public Utilities Commission*, 11 Fed. 2nd 319, 323;

Denver Union Stockyards Co. v. *United States*, 57 Fed. 2nd 735.

(d) In disregard of all of the testimony, the Commission refused to include in its valuation for the year 1925 a proper amount for undistributed construction costs. Being purely arbitrary, the Commission's action resulted in a denial of due process.

Ohio Utilities Co. v. *Commission*, 267 U. S. 359;

West Ohio Gas Co. v. *Commission*, 294 U. S. 63;

B. & O. R. R. Co. v. *United States*, 264 U. S. 258;

I. C. C. v. *L. & N. R. R. Co.*, 227 U. S. 88.

(e) Although in both its findings of tentative and final value the Commission found that the property had a going value, and the tentative value made a separate allowance of $3,490,905 therefor, the final findings gave no recognition to that value either separately or as a part of the total.

Los Angeles Gas & Electric Corp. v. *R. R. Comm. of California*, 289 U. S. 287;

McCardle v. *Indianapolis Water Co.*, 272 U. S. 400, 413.

(f) The Commission excluded from the rate base construction work in progress, averaging $3,000,000 annually, representing capital invested to meet the public demand for additional service. Funds invested in such construction work in progress are devoted to the public service just as is money invested in completed plant and in materials and supplies.

(g) For the years, 1926 to 1933, the Commission's findings of value were arrived at by the use of the undisclosed price trend information heretofore referred to.

West v. *Chesapeake & Potomac Telephone Co.*, 295 U. S. 662;
West Ohio Gas Co. v. *Commission*, 294 U. S. 63;
Interstate Commerce Commission v. *Louisville R. Co.*, 227 U. S. 88.

(h) The Commission's finding of $14,226,709 of existing depreciation in appellant's property as of June 30, 1925, was excessive by $3,000,000, as shown by the evidence.

Respectfully submitted,

THE OHIO BELL TELEPHONE COMPANY,

By KARL E. BURR,
W. H. THOMPSON,
W. B. STEWART,
ASHLEY M. VAN DUZER,
THOMAS V. KOYKKA,
Its Attorneys.

APPENDIX A.

Opinion of the Supreme Court of Ohio.

THE OHIO BELL TELEPHONE CO. v. PUBLIC UTILITIES COMMISSION OF OHIO. (Four cases.)

Public Utilities Commission—State-wide valuation of telephone company for determining rates—Price trends and judicial notice of economic conditions—Investment in construction work in progress—Cost and reproduction cost—Operating expenses—License contract service—Depreciation—Current maintenance, repairs, replacements and improvements—Rate of return—General normal economic conditions and during depression.

(Nos. 24694, 24695, 25023 and 25065—Decided July 22, 1936.)

ERROR to the Public Utilities Commission.

Plaintiff in error, The Ohio Bell Telephone Company, has filed in this court petitions in error in causes numbered 24694, 24695, 25023 and 25065, wherein the company seeks to reverse the findings and orders of the Public Utilities Commission of Ohio entered on January 16, March 1, July 5, July 9 and September 6, 1934. For the purposes of convenience in the consideration of these causes by this court all of them have been consolidated into this cause.

Throughout this statement and opinion the plaintiff in error, The Ohio Bell Telephone Company, will be referred to as "the company," and the defendant in error, The Public Utilities Commission of Ohio, will be referred to as "the commission."

The commission's order of January 16, 1934, corrected by its order of March 1, 1934, fixed a final valuation of the intrastate property of the company at $93,707,488 as of June 30, 1925, the "date certain." The value for each succeeding year to and including 1933 was also fixed by the commission. The order also required the company to refund to its patrons in the state of Ohio the sum of $13,289,172, which amount the commission found to be the excess earnings of the company's entire intrastate operations for the years 1925 to 1932, inclusive, and further directed the company to file a schedule of reduced rates effective as of June

30, 1925, and thereafter until changed by order of the commission.

Thereafter the commission made two reductions in the amount of the refunds as originally ordered. The first reduction of $1,121,494 was made in the order of July 5, 1934, for the reason that a part of the excess earnings found by the commission to have been collected by the company were referable to rates not collected under bond, and under the laws of Ohio could probably not be ordered refunded. The second reduction in the sum of $355,414 was made in the commission's order of September 6, 1934, to correct an error. The amount of the refunds was finally fixed by the commission in its order of September 6, 1934, at $11,832,264, with interest.

In its order of July 9, 1934, the commission required the company to show cause why its future rates should not be reduced.

The proceedings presented for review arise out of the action of the commission in what has come to be known as the state-wide case of The Ohio Bell Telephone Company, being properly so designated because it involved an inquiry into the value of the property and rates of that company for both exchange and toll service throughout the state of Ohio.

Prior to the year 1914, Bell System service in Ohio was limited to the portions of the state served by the Cleveland Telephone Company, the Central Union Telephone Company, the Central District Printing & Telegraph Company and the Cincinnati & Suburban Bell Telephone Company (the latter still operating as a separate company). At the same time and operating independently in the same territory in many localities were other telephone companies.

In July, 1914, a number of companies of the kind last referred to were consolidated under the name of The Ohio State Telephone Company. In December, 1920, the Cleveland Telephone Company (its name having been changed to The Ohio Bell Telephone Company) purchased the Ohio property of Central Union Telephone Company. In September, 1921, The Ohio Bell Telephone Company and The Ohio State Telephone Company were consolidated as The

Ohio Bell Telephone Company and that company thereafter purchased additional telephone properties. Even after these extensive consolidations there remained more than four hundred and fifty other independent telephone companies operating in the state.

As soon as The Ohio Bell Telephone Company (consolidated) was ready to unify the service in communities having a dual service, it filed with the commission an application to determine the rates chargeable for such unified service. In the case of some of the exchanges the municipalities concerned contested the proposed rates and a hearing was instituted. Subsequently, following the 1923 amendment of Section 614-20 of the General Code of Ohio (110 Ohio Laws, 366), the company filed new rate schedules for many of its exchanges; some of which were protested by the municipalities concerned and were collected under bond, after the end of the statutory period of suspension. This was true also with respect to the company's new schedule of toll rates for its toll service throughout the entire state.

As a result many extensive hearings were had by the commission, and in the two years prior to October, 1924, several thousand pages of testimony were taken and an even greater number of pages of exhibits offered in evidence.

On October 14, 1924, the commission, having found that many issues were common to all of the then pending Bell cases, both toll and exchange, ordered that they be consolidated and that the examination into the rates proceed as a single state-wide case involving all the rates and services, exchange and toll, of The Ohio Bell Telephone Company, including those then under investigation, and that the evidence theretofore introduced, in the several separate cases, be considered and made a part of the record in the consolidated cases.

This order concluded as follows:

"Ordered, that, on or before December 1, 1924, said The Ohio Bell Telephone Company furnish to this commission and file in this cause, as a part of the evidence

therein, a complete inventory of all of its property located in the state of Ohio and used and useful and to be used and useful, in the furnishing of telephone service therein, both toll and exchange, classified according to the classification adopted and prescribed by this commission and the Interstate Commerce Commission for telephone companies, and that, upon the filing of such inventory, this consolidated case proceed to a hearing for the determination of the fair value of said property and of the just and reasonable rates for the service thereby to be furnished by said company to its patrons throughout the state of Ohio."

By this order, forty-three separate cases then pending, the majority of which were for increased rates, were consolidated into the state-wide case.

Since the order of consolidation the company has made additional filings of exchange rates. Some were protested and are now collected under bond.

The company filed and offered in evidence an inventory and appraisal of its entire property.

In February, 1927, the case was submitted to the commission for the fixing of a tentative value, but before this valuation was announced, the then attorney general requested that the case be reopened and further valuation testimony taken.

Following that date much time was consumed in taking testimony on behalf of the state, with rebuttal evidence on behalf of the company, and in April of 1930 the case was again submitted to the commission for its finding on tentative value. This tentative valuation finding was issued on January 10, 1931, and in such finding the commission found the present value of the total property of the company as of June 30, 1925, to be $104,282,735.

On February 7 and February 9, 1931, protests to this finding were filed on behalf of the company and the state, respectively. Hearings on the protests were held on March 3 and 4, 1931. At that time counsel for the company was preparing exhibits to show Western Electric profits, cost of license contract services rendered by the American Telephone & Telegraph Company, and separation of plant, revenues, and expenses, as between interstate and intrastate

usage in accordance with the interpretation which counsel placed upon the decision of the Supreme Court of the United States in the case of *Smith et al., Commerce Comm., v. Illinois Bell Telephone Co.*, 282 U. S., 133, 75 L. Ed., 255, 51 S. Ct., 65.

On April 15, 1931, hearings were resumed for the presentation of this testimony proffered by the company.

On June 17 and 18, 1931, during the cross-examination of Charles A. Heiss, comptroller of American Telephone & Telegraph Company, and R. H. Gregory, comptroller of Western Electric, certain requests were made for detailed information underlying their exhibits and testimony. In July of that year the company furnished certain data in accordance with its version of these requests.

A hearing was had on September 28, 1931, on the requests, and a few days later a revised list, dated October 1, was submitted.

On December 5, 1931, the company filed a brief, styled "memorandum responsive to state's official request for information." A reply to the company memorandum was filed with the commission on December 28, 1931. The matter again came on for hearing on January 27, 1932.

On April 22, 1932, the commission issued its order in regard to the requests, approving some, denying others, and directing the attorney general and the company to expedite the proceedings.

The company continued to furnish data in compliance with this last order, the last being received on June 22, 1932. Practically all of the data requested related to American Telephone & Telegraph Company and Western Electric Company.

During the entire year 1932 the Illinois case was going forward, volumes of testimony and exhibits being introduced at hearings before Judge Wilkerson, as a result of the decision of the Supreme Court of the United States remanding that case to the statutory court for further findings. This evidence so introduced in the Illinois case related to the same general issues that were being presented to the Ohio commission.

Hearings were concluded and that record closed early in the fall of 1932, and all of the issues thoroughly briefed by counsel on each side. Five days were allotted early in December for oral argument before the full statutory court of three judges, at which time that case was submitted for decision.

Subsequently it was found that the material furnished by the company in professed compliance with the request made in June was inadequate and not responsive.

A great deal of time would have been necessary to formally introduce the same or similar testimony into the record of this case, so when hearings were resumed in this case on December 19, 1932, before the commission, a stipulation was worked out between counsel to file therein the testimony and exhibits in the Illinois case in so far as it related to the four issues, namely, Western Electric profits, American Telephone & Telegraph license contract service costs, separation of interstate and intrastate plant, revenues and expenses, and rate of return. As a result of this stipulation many days of hearing were saved. The stipulation provided, in substance, that the new record made in the Illinois case be incorporated in this record covering the testimony of certain specified witnesses and exhibits introduced through them and it also provided that all such evidence was introduced subject to the same objections made in the Illinois case. Certain additional exhibits relating to the Ohio company were introduced by stipulation, such exhibits having been prepared in the same manner as their correspondingly numbered exhibits in the Illinois case. The stipulation further provided for the introduction into this record of the requests made on behalf of the state, heretofore referred to, and the material furnished by the company in response thereto.

On December 29, 1932, the record in this case was closed on the introduction of certain testimony and exhibits of company witnesses and E. W. Wood on behalf of the state. Subsequently, under date of January 16, 1934, the commission made and entered its final order in this case, fixing the value of the property of The Ohio Bell Telephone Company as of June 30, 1925, the date certain in this case, and

for each of the years subsequent thereto, through the year 1932. Thereafter the commission's orders of March 1, July 5, July 9 and September 6, 1934, heretofore described, followed.

The orders of the commission provide for refunds in forty-four Ohio municipalities to more than 500,000 telephone subscribers.

The petition in error of The Ohio Bell Telephone Company is in the words and figures following:

"A

"The Ohio Bell Telephone Company, plaintiff in error, is and has been continuously since the 20th day of September, 1921, a corporation duly organized under the laws of Ohio.

"Continuously since said date plaintiff in error has owned and operated a telephone system now consisting of one hundred and sixty-two local exchanges serving various cities and towns in said state with more than 530,000 connected subscribers stations, and of toll lines, by means of which system plaintiff in error has been during all of said period and is now engaged in the business of transmitting to, from, through and in said state telephonic messages, and has been and now is a public utility within the meaning of the General Code of Ohio.

"The defendant in error, The Public Utilities Commission of Ohio, hereinafter referred to as the 'Commission,' is now and has been continuously since 1913 an administrative body created by the laws of the State of Ohio.

"B

"This proceeding in error is brought to obtain a reversal, upon the grounds hereinafter stated, of the findings and order of the Commission made and entered on September 6, 1934, as well as the findings and orders of the Commission of January 16, March 1, July 5 and 9, 1934, (heretofore complained of in Causes Nos. 24694, 24695 and 25023 upon the dockets of this Court) in so far as said findings and orders form the basis for or are incorporated into said findings and order of September 6, 1934.

"The order of September 6, 1934, is the latest of a series of orders entered by the Commission in Cause No. 3307, which cause, inaugurated October 14, 1924, upon the Commission's own motion, is an investigation and inquiry to determine the fair value of the property of The Ohio Bell Telephone Company and to fix just and reasonable rates, rules and regulations for its service.

"The order of September 6, 1934, requires plaintiff in error to refund what the Commission found to be excess charges for its exchange services rendered during the years 1925 to 1932 inclusive, in the sum of $11,423,137, and for its toll service for the years 1925 and 1926, the sum of $409,127, or a total of $11,832,264. The order fixes the amounts to be repaid to the subscribers in each of 44 exchange areas listed in Schedule A of said order and in the toll system and requires such repayment to be made within 90 days.

"C

"A brief history of the proceedings before and the findings and orders entered by the Commission, in so far as essential to the questions presented by this petition in error, is as follows:

"1. Prior to October 14, 1924, plaintiff in error or its predecessor had filed with the Commission pursuant to the provisions of the Robinson and Pence laws, respectively (108 Ohio Laws 1094 and 110 Ohio Laws 366), a number of separate schedules of increased rates for certain classes of its service in separate exchanges, and a schedule of increased rates for parts of its toll service. In some instances protests had been filed against such schedules as provided in said Robinson and Pence laws, and each such protest had been made the subject of a separate case on the docket of the Commission. In each such separate case the Commission had suspended the effective date of the schedule and had entered upon a hearing concerning the fair value of plaintiff in error's property in such exchange and the propriety of such rates, and thereafter said rates had become effective pursuant to a separate bond filed with and approved by the Commission in each such case, conditioned

for the repayment by plaintiff in error of the portion of such increased rates finally determined by the Commission to be excessive. In each such case plaintiff in error was proceeding to show separately the fair value of its property and its net income and that the rates so made effective under bond were not excessive.

"2. On October 14, 1924, before any such case had been concluded, the Commission on its own motion instituted a company-wide investigation of the value of plaintiff in error's entire property and the reasonableness of its rates, and consolidated with said company-wide investigation (No. 3307) all of the then pending separate cases.

"3. Thereafter plaintiff in error filed separate schedules of increased rates for certain classes of its service in other exchanges, some of which schedules were in like manner suspended by the Commission, became effective under separate bond and were consolidated with said company-wide investigation. There are pending and undisposed of forty-five of such separate exchange cases and one such toll case, in which cases plaintiff in error has on file with the Commission bonds aggregating more than $14,000,000.

"4. Instead of determining said exchange and toll cases separately, the Commission in its said several orders herein referred to, has ordered plaintiff in error to make refunds based upon the Commission's findings of value of plaintiff in error's intrastate property as a single unit and of its aggregate net income therefrom, without having found or determined the fair value of plaintiff in error's property or the amount of its net income in respect of any separate exchange or its toll system, and without having found for any year or years that any portion of any rate was excessive.

"5. The Commission's first order, entered on January 10, 1931, tentatively fixed the fair value of plaintiff in error's total property, including the interstate portion thereof, as of June 30, 1925, at $104,282,735.

"6. On January 16, 1934, the Commission made its findings of final value for plaintiff in error's intrastate property as of June 30, 1925, by deducting from its tentative find-

ing the sum of $2,714,788 on account of the interstate property, and by further reducing such tentative finding in the following amounts, without any change in the pertinent evidence:

"(a) By deducting the sum of $316,090 from the allowance for right of way;

"(b) By eliminating the sum of $3,490,905 on account of going concern value;

"(c) By reducing the allowance for working capital, including materials and supplies, by the sum of $535,970; and

"(d) By deducting the sum of $8,296,181 from the amount of undistributed construction expenditures.

"The Commission's finding of final value of the intrastate portion of plaintiff in error's property as of June 30, 1925, was thus $93,707,488 or $7,639,146 lower than its finding of tentative value.

"The Commission also found the value of plaintiff in error's property for each succeeding year to 1933 by the application of price trends hereafter referred to.

"In the same order the Commission found that plaintiff in error had collected excess charges for its intrastate telephone service for the years 1925 to 1932, inclusive, in the aggregate sum of $13,289,172 and ordered plaintiff in error to refund to its subscribers said entire sum, with interest, and to file with the Commission a schedule of reduced rates for its telephone service effective retroactively as of June 30, 1925, and thereafter until changed by the order of the Commission.

"7. The Commission has consistently found that for the year 1933 plaintiff in error had earned no excess income, and therefore no refund has been ordered for that year.

"8. Pursuant to said orders of January 16 and March 1, 1934, plaintiff in error, on April 17, 1934, submitted to the Commission, under a written protest, certain 'Rate and Revenue Data and Estimates' hereafter referred to.

"9. On July 5, 1934, the Commission made another order wherein it found that plaintiff in error had collected under bond in protesting exchanges and for its intrastate toll services, excess charges for the years 1925 to 1932, inclusive, in the aggregate amounts of $11,423,137 in such exchanges and $744,541 for such toll services, or a total of $12,167,678; being $1,121,494 less than the amount ordered refunded in its former orders.

"Said order required plaintiff in error to show cause upon August 1, 1934, why said refunds should not be ordered.

"10. On July 9, 1934, the Commission ordered plaintiff in error to show cause by August 1, 1934, why a further order should not enter adopting and substituting for plaintiff in error's existing schedules of rates, 'said first or said second revision of existing schedules' of plaintiff in error (referring to the hypothetical rate calculations contained in the 'Rate and Revenue Data and Estimates' furnished by plaintiff in error under protest as aforesaid).

"11. On September 6, 1934, the Commission entered the order herein complained of, wherein it found that plaintiff in error had collected under bond in protesting exchanges and from its intrastate toll services, excess charges for the years 1925 to 1932, inclusive, in the aggregate amounts of $11,423,137 in such exchanges and $409,127 from such toll services, or a total of $11,832,264, being $1,456,908 less than the amount ordered refunded in said orders of January 16 and March 1, 1934, and $335,414 less than the amount ordered refunded in the order of July 5, 1934; and ordered plaintiff in error to make repayment to its subscribers; all as set forth in said order and in Schedule A thereof. In its finding of September 6, 1934, the Commission stated that all prior findings and orders, pertaining to excess charges, conflicting with said finding of September 6, 1934, should be modified to conform to it.

"D

"Plaintiff in error, within the time required by law, appropriately challenged each of the findings, orders and

rulings of the Commission and made certain written requests upon it, as follows:

"1. On February 7, 1931, protest to finding of tentative value of January 10, 1931, was filed by plaintiff in error. It was overruled by the Commission in its order of January 16, 1934.

"2. On February 6, 1934, plaintiff in error filed its application and petition for a rehearing with respect to the order of January 16, 1934. It was overruled by the Commission in its order of March 1, 1934.

"3. On February 17, 1934, plaintiff in error filed with the Commission its application and request:

> "(a) That the Commission modify said findings and order of January 16, 1934, by finding that the rates charged by plaintiff in error are just and lawful rates and by establishing such rates as the rates thereafter to be charged by plaintiff in error for its services until changed or modified in accordance with law; (b) that the Commission permit plaintiff in error in accordance with the request theretofore made by it and thereby renewed, to introduce evidence of the fair value of its property and its net income in each of the said separate causes, and (c) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order, which information was at no time exhibited to plaintiff in error or introduced in any open hearing or made a part of the record in said cause and to which information plaintiff in error has never had access.

This request was overruled by the Commission in its order of March 1, 1934.

"4. On March 9, 1934, plaintiff in error filed its protest, application and petition for a rehearing with respect to the order of March 1, 1934, and on the same day the Commission overruled the same.

"5. On April 17, 1934, pursuant to said orders of January 16 and March 1, 1934, plaintiff in error duly submitted to the Commission under written protest certain 'Rate and Revenue Data and Estimates' heretofore referred to.

"6. On July 31, 1934, plaintiff in error filed:

"An application and request, directed to the order of July 5, 1934, (a) for permission to inspect and rebut the undisclosed price trend information hereinabove in paragraph 3(c) referred to; (b) for a disclosure of the Commission's methods of apportionment and allocation employed in arriving at the refunds found therein; and (c) for the opportunity to introduce separate evidence in the separate bond cases as hereinbefore set forth;

"An application and request directed to the order of July 9, 1934, that the Commission fix plaintiff in error's present rates as the rates for its future service or, if the Commission intended to reduce its present rates, to permit plaintiff in error to show that the reduced rates proposed by the Commission would reduce the plaintiff in error's net income for the year 1934 by $1,800,000 and permit it to earn less than 3½ per cent upon the fair value of its intrastate property for 1934;

"Verified return to the rule to show cause contained in the order of July 5, 1934;

"Verified return to the rule to show cause contained in the order of July 9, 1934;

"Protest of plaintiff in error against orders of July 5 and 9, 1934, and application and petition for rehearing with respect to said orders.

"7. On August 1, 1934, the Commission overruled plaintiff in error's said application to establish its present rates as its rates for the future and on September 6, 1934, overruled all of the other applications, protests, petitions and returns referred to in paragraph 6.

"8. On August 29, 1934, plaintiff in error filed its protest against the Commission's ruling of August 1, 1934, and its further application and petition for a rehearing.

"9. On September 25, 1934, plaintiff in error filed with the Commission its application and request with respect to the Commission's order of September 6, 1934;

"a. To permit plaintiff in error, in accordance with the requests theretofore made by it, to introduce separate evidence in respect of each of the separate bond cases;

"b. To permit plaintiff in error to examine and rebut the price trend information hereinabove in paragraphs (3) and (6) referred to; and

"c. To make a disclosure with respect to the instructions of the Commission to its accountant, Wood, and his use of such instructions in making the apportionment of excess earnings.

"This application was denied by the Commission on September 27, 1934.

"10. On October 1, 1934, plaintiff in error filed with the Commission its protest against said order of September 6, 1934, and its application and petition for a rehearing of this cause which was denied on October 19, 1934.

"11. On October 1, 1934, plaintiff in error also filed with the Commission its application for a stay of the order of September 6, 1934, which application the Commission denied on October 19, 1934.

"Each and all of the exhibits, 'A' to 'U,' above referred to are hereby incorporated herein and made a part hereof.

"E

"In said proceedings, acts, findings and orders, the Commission erred, as follows:

"1. In basing its said findings of value and orders upon alleged material and labor cost prices and trends obtained from various sources without plaintiff in error's knowledge, and not offered or introduced in evidence in any

open hearing or made a part of the record in this case and to which plaintiff in error never had access and as to which it had no opportunity to cross examine, explain or rebut, as follows:

"(a) Cost prices for several years furnished by unidentified manufacturers of telephone equipment;

"(b) The trend of land values allegedly ascertained from an examination of tax valuations in certain of the large cities of Ohio, the names of which cities were undisclosed;

"(c) Building cost trends taken from the Engineering News Record;

"(d) Labor cost trends from the same publication;

"(e) Other labor and material cost trends obtained from various undisclosed sources.

"The Commission having fixed the fair value of plaintiff in error's property as of June 30, 1925, thereupon erroneously used the price trends obtained from the sources above referred to in fixing the fair value of plaintiff in error's intrastate property, for each of the years 1926 to 1933, both inclusive.

"The alleged facts so considered did not come from any official source which the Commission had the right to notice judicially. They were not published by any public authority, governmental or state. They were not introduced in evidence, and plaintiff in error had no opportunity to examine or cross examine as to such claimed proof or to explain or rebut the same, or to show that such claimed price trends could not fairly be considered in determining the fair value of plaintiff in error's property. By reason of these facts the Commission denied plaintiff in error a fair hearing and in determining this case admittedly considered and gave controlling weight to evidence not introduced in any hearing.

"On February 17, July 31 and September 25, 1934, plaintiff in error filed the written requests heretofore referred to, each of which in specific terms asked the Commission to disclose the evidence on which it had arrived at

the price trends above referred to and had fixed the value of plaintiff in error's intrastate property. These requests were all denied. The Commission mistakenly stated in its order of September 6, 1934, that plaintiff in error had been accorded ample opportunity to examine and consider all necessary and pertinent evidence. The record, however, is undisputed that plaintiff was never granted access to or an opportunity to examine any of the price trend information above referred to upon which the value of plaintiff in error's property for the years 1926 to 1933 was fixed.

"The findings of value and the orders of the Commission fixing the amount of the refunds, aggregating $11,832,264, which were necessarily based upon such claimed proof deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and said findings and orders are therefore void in their entirety.

"2. Plaintiff in error was deprived of its property without due process of law and denied the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States by the order of the Commission of September 6, 1934, ordering plaintiff in error to refund to its exchange and toll subscribers the amounts set forth therein, because:

> "The Commission refused to receive evidence showing separately for each year the fair value of plaintiff in error's property and net income and fair rate of return with respect to each separate exchange and plaintiff in error's toll system where rates had become effective pursuant to bonds as provided in the Robinson and Pence laws notwithstanding repeated written requests of plaintiff in error to introduce such evidence and repeated requests that a date be fixed for hearing the same.

"Said refunds therefore were ordered erroneously, arbitrarily and without any evidence upon which they can be sustained.

"3. Plaintiff in error's rates throughout the period in controversy in said cause were of two kinds:

"Those filed with the Commission and, following the statutory protest, made effective pursuant to bond approved by the Commission, as provided in the Robinson and Pence laws;

"Those filed with the Commission and, in the absence of such protest, made effective without bond or other condition.

"In fixing the amount of the refunds attributable to the bond cases, the Commission made certain apportionments and an allocation as follows:

"1st. An apportionment of the alleged excessive earnings of plaintiff in error for the years 1925 to 1932, inclusive, in the sum of $13,289,172 between protesting exchanges, that is to say, exchanges wherein any rate had been collected under bond in any of the aforementioned years, and non-protesting exchanges, that is to say, exchanges wherein no rate had been so collected;

"2nd. An allocation of $409,127 to plaintiff in error's toll system and of $11,423,137 to its protesting exchanges; and

"3rd. An apportionment of the sum of $11,423,137, the amount required to be refunded in its protesting exchanges, among said several exchanges.

"The Commission erred in making said apportionments and allocation, and in ordering plaintiff in error to make refunds as ordered, in the following respects:

"(a) It had no authority to require plaintiff in error to make refunds with respect to rates collected under bond without determining the fair value of plaintiff in error's property and its net income for each of its protesting exchanges separately and for its toll system. This the Commission refused to do. Instead, it arbitrarily used and applied accounting methods having no relation to property values and net earnings.

"(b) The Commission's method employed in making said apportionments and allocation was erroneous, arbitrary, inapplicable and not based upon any evidence in the case.

"(c) In arriving at the portion of excess earnings to be refunded both in exchanges and in the toll system, the Commission considered exchange service revenues only and ignored toll revenues. Its error in this respect was two-fold: first, plaintiff in error during the period involved received large revenues from its intrastate toll system and these revenues were disregarded in making the apportionment; second, the use of revenues as a basis is wholly improper because revenues are in no sense evidence of net earnings.

"(d) In making the apportionment between the protesting and the non-protesting exchanges the Commission included as bonded revenues in each year the total revenues in any exchange in which any rate had been collected pursuant to bond, although substantial portions of such revenues were not collected under bond, thereby erroneously increasing by more than $4,000,000 the refunds required to be made by plaintiff in error.

"(e) Plaintiff in error was required to make refunds in excess of $400,000 in respect of its intrastate toll system for the years 1925 and 1926 although the Commission made no determination of the fair value of the intrastate toll property or its net income or that any toll rate was excessive.

"(f) The Commission did not find that any of plaintiff in error's exchange or toll rates collected under bond was unreasonable or excessive for any year. Without such finding the Commission could not under the applicable Ohio statutes lawfully order any refund.

"(g) The Commission used an arbitrary method in ordering said refunds, viz: for each of the years in controversy a refund for each exchange, based in each instance upon the same percentage of the amount of

the increases in rates collected under bond, which basis was wholly without support in the evidence.

"(h) In making its apportionment of excessive earnings between protesting and non-protesting exchanges the Commission used the basis of total exchange service revenues. This method was necessarily based upon the assumption that there was included in each dollar of such total exchange service revenues an equal amount of excess net earnings. In its subsequent apportionment and allocation, the Commission abandoned this method and the necessary assumption upon which it was based and ordered refunds to the extent of $4,640,364 more than would have resulted from a consistent application of the first method.

"The action of the Commission with respect to such refunds and the apportionments and allocations upon which they were based deprived plaintiff in error of its property without due process of law and denied it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"4. The findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that therein the Commission found:

"(a) That the fair value of plaintiff in error's intrastate property used and useful in the service of the public was the following amounts as of the following dates respectively:

June 30, 1925,	$ 93,707,488
December 31, 1926,	101,767,774
December 31, 1927,	111,036,522
December 31, 1928,	122,417,735
December 31, 1929,	134,765,576
December 31, 1930,	145,683,047
December 31, 1931,	145,271,663
December 31, 1932,	133,625,655
November 30, 1933,	126,250,206

"(b) That the net income of plaintiff in error from its intrastate business available for return upon said property was the following amounts for the following years:

1925	$ 8,382,171
1926	9,165,227
1927	9,759,167
1928	10,494,542
1929	10,896,937
1930	10,951,087
1931	11,102,418
1932	8,257,746
1933	6,959,232

"(c) That the reasonable rates of return which plaintiff in error was entitled to earn upon said intrastate property were the following percentages for the following years:

1925 to 1929, inclusive	7 per cent per annum
1930 to 1931, inclusive	6½ per cent per annum
1932 and 1933	5½ per cent per annum

"(d) In its finding and order of September 6, 1934, the Commission found that plaintiff in error had collected excess charges under bond in protesting exchanges and in its intrastate toll system in the following amounts:

	Exchange	*Toll*
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
	$11,423,137.00	$409,127.00

"Upon such findings so made, the Commission on said date ordered plaintiff in error to refund said alleged excessive earnings in said respective amounts of $11,423,137 and $409,127, or an aggregate amount of $11,832,264, together with interest thereon at the rate of six per cent (6%) per annum from the date of payment until the date of refund.

"The findings and orders of the Commission are erroneous, arbitrary, unreasonable, invalid and confiscatory of plaintiff in error's property in that the fair value of plaintiff in error's said intrastate property in each of the years 1925 to 1933 inclusive was largely in excess of the amounts so found by the Commission therefor; plaintiff in error's net income was in each of said years substantially below the amounts found by the Commission as such; the rates of return actually earned by plaintiff in error were substantially lower than those which the Commission found plaintiff in error had earned in each of said years, and the return to which plaintiff in error was reasonably entitled was substantially in excess of that found by the Commission to be fair for said years, respectively, and plaintiff in error had no excessive or unreasonable net income in any of said years, all as more particularly shown in Specifications of Error Nos. 5, 6, 7 and 8, *infra*.

"5. The Commission should have found that the minimum fair value of plaintiff in error's intrastate property was at least $30,000,000 in excess of the values found by the Commission, set forth in (a) of Specification of Error No. 4, for each of the dates therein set forth.

"6. The Commission, instead of finding plaintiff in error's net income to be as set out in (b) of Specification of Error No. 4, should have found that plaintiff in error's net income from its intrastate business available for a return, was in no year excessive and was not more than the following amounts in each of the following years:

"1925, $6,014,180; 1926, $6,726,922; 1927, $7,260,885; 1928, $8,266,094; 1929, $8,200,940; 1930, $8,068,933; 1931, $8,115,568; 1932, $7,086,738; 1933, $6,160,952.

"7. The Commission erred in finding that plaintiff in error's net income from its intrastate business equalled an annual earning at the following rates upon the value of its intrastate property used and useful in furnishing its service in the State of Ohio for each of the following years, viz:

> "1925, 8.95 per cent; 1926, 9.01 per cent; 1927, 8.79 per cent; 1928, 8.57 per cent; 1929, 8.09 per cent; 1930, 7.52 per cent; 1931, 7.64 per cent; 1932, 6.18 per cent; 1933, 5.51 per cent.

"The rates of return so found by the Commission are higher than the rates of return actually earned by plaintiff in error upon such property, in that, as shown by the evidence, the Commission found the fair value of plaintiff in error's intrastate property in each of such years to be too low as shown in Specification of Error No. 5 hereof, and found plaintiff in error's net income for each of such years to be substantially higher than it actually was, as shown in Specifications of Error Nos. 4(b) and 6 hereof.

"The Commission should have found, in accordance with the evidence in this case, that the rates of return actually earned by plaintiff in error upon such property during each of said years were substantially less than the rates of return found by the Commission to be reasonable for said years, respectively, as hereinafter in Specification of Error No. 8 set forth.

"8. The Commission erred in finding that plaintiff in error was entitled to earn upon the fair value of its intrastate property only the following annual rates of return for the following years:

1925 to 1929, inclusive,	7 per cent per annum;
1930 to 1931, inclusive,	6½ per cent per annum;
1932 and 1933,	5½ per cent per annum.

"The Commission should have found upon the evidence that the rates of return at which plaintiff in error was entitled to earn upon the fair value of its said property in each of said years were substantially in excess of said rates of return hereinabove last set forth, respectively. In this

respect the said orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"9. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by erroneously evaluating plant items manufactured by Western Electic Company and included in plaintiff in error's telephone plant in each of the following respects:

"(a) The Commission developed a trend for Western Electric prices from the prices of that company for telephone apparatus only and then applied such trend not only to plaintiff in error's telephone apparatus but to its lead covered cable and materials and supplies. This action resulted in undervaluing plaintiff in error's property.

"(b) The Commission having determined certain price trends for labor and material based upon the experience of manufacturers other than the Western Electric Company, applied such price trends to plaintiff in error's plant items of Western Electric manufacture, although it conclusively appeared from the evidence that Western Electric Company's prices were lower than the prices charged by other manufacturers for comparable materials and lower than the prices charged by Western Electric Company for the same materials to others, and that Western Electric Company's earnings in its Bell business were at all times reasonable.

"(c) The Commission refused to give effect to an increase of approximately ten per cent in the price of telephone apparatus made by Western Electric Company under the following circumstances:

"The evidence showed that commencing with December 31st, 1920, and continuing until July 1st, 1929, Western Electric Company made reductions in the prices charged by it to plaintiff in error and other Bell Associate Com-

panies for telephone apparatus, so that on July 1st, 1929, the level of the prices for such telephone apparatus was only 58.3 per cent of what it had been on the 31st day of December, 1920. These reductions in prices by Western Electric Company were made at a time when other manufacturers were maintaining or increasing their prices. The reductions in 1929 were made in anticipation of a large increase in Western's business which was not realized, and consequently, in November, 1930, Western Electric Company restored the prices which had been in effect in 1928. With such increased prices Western Electric Company earned only 4.6 per cent and 4.2 per cent on its investment in its Bell business for the years 1930 and 1931, respectively, and the evidence showed that it would sustain a loss in such business of approximately $6,400,000 in 1932. The Commission's action in rejecting such price increase can not be justified on the basis that Western's earnings in its Bell business were at any time unreasonable or its prices excessive. Its action in rejecting such price increase was unlawful and unreasonable and resulted in a substantial undervaluation of plaintiff in error's intrastate property for each of the years 1930, 1931, 1932 and 1933.

"10. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive, by failing to give proper consideration and weight to the actual costs of such property as such costs are correctly reflected in plaintiff in error's books and shown by the evidence.

"The actual cost of plaintiff in error's intrastate property (including cash working capital and materials and supplies as fixed by the Commission in said orders, but exclusive of construction work in progress) were the following sums as of the following dates respectively:

Date	*Book Costs*
June 30, 1925,	$98,798,259
December 31, 1926,	111,044,696
December 31, 1927,	126,725,311
December 31, 1928,	136,883,155
December 31, 1929,	150,330,971

Date	*Book Costs*
December 31, 1930,	162,820,788
December 31, 1931,	164,932,754
December 31, 1932,	162,480,450
November 30, 1933,	161,809,034

"11. The Commission erred in finding in its order of September 6, 1934, that plaintiff in error in the period 1925 to 1932, inclusive, had imposed, charged and collected pursuant to bond from the subscribers and patrons of its intrastate services, exchange and toll, within the State of Ohio, the sum of $11,832,264 in excess of a fair return upon the fair value of its property and in ordering that plaintiff in error refund within ninety days therefrom the following amounts for the following years, to-wit:

	Exchange	*Toll*
1925	$1,137,195.00	$232,282.00
1926	1,637,314.00	176,845.00
1927	1,823,857.00	.....
1928	1,772,238.00	.....
1929	1,344,624.00	.....
1930	1,357,589.00	.....
1931	1,519,405.00	.....
1932	830,915.00	.....
TOTAL	$11,423,137.00	$409,127.00

"There was no evidence in the case which justified any finding by the Commission that any refund should be made in any exchange or in the toll system with respect to any of the years in question, and no basis upon which the Commission's order for such refund can be sustained. The order of the Commission in this respect deprives plaintiff in error of its property without due process of law and denies it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"12. The Commission erred in its order of January 16, 1934, in reducing, without any change in the pertinent evidence, the unreasonably low value of plaintiff in error's intrastate property as of June 30, 1925, as tentatively fixed

by it in its order of January 10, 1931, in the following respects and by the following amounts:

"(a) By deducting the sum of $316,090 from the allowance for right of way;

"(b) By eliminating the sum of $3,490,905 on account of going concern value;

"(c) By reducing the allowance for working capital including materials and supplies, by the sum of $535,970;

"(d) By excluding and deducting the sum of $3,296,181 from the amount of the undistributed construction expenditures.

"In each of the foregoing respects, the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"13. The Commission erred in said findings and orders by failing to include any allowance for the going concern value of plaintiff in error's intrastate property in any year. In its tentative value order of January 10, 1931, the Commission found that the element of going value amounted to $3,592,040, which amount in itself was too low according to the undisputed evidence. It made the allowance therefor separately and did not include in its detailed valuation of the physical property any increment on account of the going value, representing the difference between an established plant and business in operation and earning money, and the bare bones of the physical plant. In its final findings of fair value, the Commission not only eliminated any allowance for going value, but reduced the fair value of plaintiff in error's intrastate property as tentatively fixed in its order of January 10, 1931, by making other substantial reductions. The result is that in the alleged fair values as found by the Commission in its orders of January 16, 1934, and March 1, 1934, no allowance whatever has been made for the going concern value in any of the years, either as a separate element or otherwise. The Commission's refusal to value the property as a going concern has deprived

plaintiff in error of its property without due proces of law, and denied to it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

"14. The Commission erred in arriving at the fair value of plaintiff in error's intrastate property for each of the years 1925 to 1933, inclusive,

"(a) By excluding from such valuation the following amounts of money invested by plaintiff in error during such respective years in telephone property in process of construction, viz:

1925, $2,161,109; 1926, $4,168,837; 1927, $3,658,921; 1928, $2,059,240; 1929, $2,992,501; 1930, $4,750,748; 1931, $4,874,625; 1932, $810,383; 1933, $2,606,456.

"(b) By disallowing for each of the years 1925 to 1933, inclusive, any amount for engineering in respect to the following items of plant: right of way, buildings and also material values in switchboards installed by Western Electric Company, in other equipment of central offices, private branch exchanges, interior block wires, exchange aerial wire, and toll aerial wire.

"(c) By limiting the allowance for the item of omissions for each of the years 1925 to 1933, inclusive, to one per cent and by excluding the following items of plant from the amount upon which the allowance for omissions was computed: right of way, buildings and general equipment.

"(d) By allowing only one per cent for the item of taxes during construction instead of basing the same on the actual experience of plaintiff in error.

"(e) By allowing an inadequate amount for the item of plant supervision and tool expense.

"The Commission's exclusion of such amounts deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"15. The Commission erred in finding that the actual existing depreciation in plaintiff in error's said intrastate

property as of June 30, 1925, was $14,226,709. The reproduction cost new of plaintiff in error's intrastate property as found by the Commission for the same date in its order of January 16, 1934, was $107,934,197. Based upon such finding of reproduction cost new the Commission should not have found existing depreciation in the property in excess of $10,000,000. The Commission thus erroneously deducted on account of the existing depreciation in plaintiff in error's intrastate property more than $4,000,000 in excess of any sum justified by the evidence. In so doing the said findings and orders of the Commission deprive plaintiff in error of its property without due process of law and deny to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"For each of the succeeding years 1926 to 1933, inclusive, the Commission erred in arriving at the fair value of plaintiff in error's intrastate property by deducting amounts on account of existing depreciation in such property largely in excess of the actual existing depreciation therein.

"16. The Commission erroneously refused to include in plaintiff in error's necessary operating expenses the following sums of money for the years 1925 to 1933, respectively, representing part of the annual expense of depreciation of the intrastate portion of plaintiff in error's depreciable property:

1925	$1,635,563
1926	1,756,299
1927	1,757,275
1928	1,908,000
1929	2,520,223
1930	2,758,913
1931	2,744,479
1932	1,034,985
1933	465,648

"17. The Commission purported to allow in plaintiff in error's operating expenses for each of the years 1925 to 1933 an annual expense of depreciation at the rate of four per cent per annum of plaintiff in error's depreciable

intrastate property, although its actual allowance therefor was less than four per cent. The Commission should have allowed, under the evidence in this case, not less than the following annual amounts for the expense of depreciation in respect of plaintiff in error's intrastate property:

"1925, $4,914,980; 1926, $5,371,921; 1927, $5,815,204; 1928, $6,457,602; 1929, $7,484,033; 1930, $8,247,474; 1931, $8,549,677; 1932, $6,892,986; 1933, $6,269,772.

"The Commission's action in these respects deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"18. Plaintiff in error's annual expense of depreciation was based upon evidence of service life and salvage of the several classes of its depreciable property, which evidence was undisputed. The Commission erred in ignoring such evidence and in fixing arbitrarily what it states was a rate of four per cent per annum, although in fact less than that amount. In doing so, the Commission purported to adopt the retirement theory of depreciation accounting, but in fact based its allowances upon the experience of the company for a period antedating the period in controversy. The Commission's allowance for depreciation expense for the period 1925 to 1931 was $9,852,737 less than actual expense of retirements during that period. Plaintiff in error was entitled for the expense of depreciation to a sum substantially in excess of the expense of its retirements, and the action of the Commission in allowing less than such expense deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"19. The Commission erroneously refused to permit the deduction from plaintiff in error's gross income of the following sums of money for the years 1925 to 1932, respectively, representing sums paid by plaintiff in error to the American Telephone and Telegraph Company on account

of license contract services rendered by said company to plaintiff in error, viz:

"1925, $732,429; 1926, $682,004; 1927, $741,006; 1928, $320,448; 1929, $175,773; 1930, $100,906; 1931, $94,350; 1932, $23,302.

Said sums of money were paid by plaintiff in error to said American Telephone and Telegraph Company for services actually rendered by the latter to plaintiff in error, which services were required by plaintiff in error in the rendition of its intrastate service in the State of Ohio.

"The Commission's refusal to allow plaintiff in error to make such deductions from its gross income or to treat such payments as an operating expense for each of such years deprives plaintiff in error of its property without due process of law and denies to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"20. The Commission erred in failing to make adjustments in plaintiff in error's expenses by way of increases in its Federal Income Tax because of the disallowances shown in paragraphs 16 and 19, *supra*.

"21. The reproduction cost new and the fair value of plaintiff in error's property as of June 30, 1925, as tentatively found and determined by the Commission in said findings and order of January 10, 1931, are less than the actual, true and correct reproduction cost new and fair value thereof and are therefore unjust, unreasonable and too low with respect to said property as a whole and specifically as to each and all of plaintiff in error's classes of property.

"The Commission erred in overruling plaintiff in error's protest against said tentative value order.

"22. The Commission erred in said findings and orders of January 16 and March 1, 1934, in requiring, for the purpose of reducing plaintiff in error's future rates, that plaintiff in error file, effective retroactively as of June 30, 1925, and thereafter until changed by order of the Commission, such schedules of reduced rates for plaintiff in error's in-

trastate service as would produce net income not in excess of the amount found by the Commission to be fair and reasonable as of that date. This requirement of said last mentioned orders plaintiff in error complied with on April 17, 1934, by submitting to the Commission, under protest, 'Rate and Revenue Data and Estimates.'

"Said orders deprive plaintiff in error of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

"(a) The action of the Commission was an attempt to accomplish indirectly that which it could not directly do, viz.: to deprive plaintiff in error of the opportunity to earn a fair return upon the fair value of its property by reducing plaintiff in error's present rates, although they are now producing, as the Commission found in said orders, no more than a fair return on the present value of said property as found by the Commission.

"(b) In said findings and orders of January 16, and March 1, 1934 the Commission found that for the year 1933 plaintiff in error was entitled to earn a return of 5½ per cent upon the fair value of its intrastate property as fixed by the Commission for that year and that plaintiff in error's net income from said property for that year at its present rates did not exceed such a return. Any reduction in plaintiff in error's present rates would necessarily reduce its net income below the amount found by the Commission to be fair, and would be unjust and unreasonable.

"(c) Said hypothetical rates, if now made effective retroactively, will, throughout the period of their effectiveness, deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

"(d) Under the applicable Ohio statutes the Commission had no authority to require plaintiff in error to file schedules of rates effective retroactively.

"(e) The action of the Commission in this respect was erroneous and in direct violation of the laws of the State of Ohio, as under such laws the Commission has no authority to fix rates except for the future.

"(f) Such order attempts unlawfully to reduce plaintiff in error's rates for its present and future service, by ordering plaintiff in error to make effective, for such service, rates not in issue in any of the separate bond cases and in respect of which no hearing or proof has been had.

"In addition, the hypothetical rates contained in the 'Rate and Revenue Data and Estimates' which plaintiff in error was compelled to and did furnish to the Commission on April 17, 1934, could not lawfully be made the basis of any order fixing rates for the future for plaintiff in error for each of the following reasons:

"(a) Such hypothetical rates were based on a reduction of $1,822,647 for the year 1925, which reduction was applicable to plaintiff in error's entire intrastate earnings, without distinction as between rates collected pursuant to bond and those not so collected, whereas in the order of September 6, 1934, refunds are ordered only with respect to exchanges and the toll system where rates were collected pursuant to bond and in an amount approximately $450,000 less than the amount of the refunds fixed for the year 1925 by the orders of January 16 and March 1, 1934.

"(b) The hypothetical rates contained in said 'Rate and Revenue Data and Estimates,' if they had been in effect during the years 1926 to 1932, inclusive, would not have produced the reductions in revenue which the Commission found to be proper for said years respectively, either in its said orders of January 16 and March 1, 1934, its order of July 5, 1934, or its order of September 6, 1934.

"(c) Many of the decreases shown in the hypothetical rates in said 'Rate and Revenue Data and Estimates' are with respect to exchanges in which rates were not made effective pursuant to bond. Inasmuch as the Commission in its order of July 5, 1934, and September 6, 1934, required refunds to be made only with respect to rates made effective pursuant to bond, said hypothetical rates could have

no application to the orders of the Commission as now modified.

"(d) The Commission had no right to fix rates for plaintiff in error's intrastate telephone service for the present and future by considering only the fair value of the property, the revenues, expenses and net income of plaintiff in error for the year 1925. In determining rates for the present and future the Commission was required to consider the fair value of plaintiff in error's property, its revenues, expenses and net income for the most recent period available. Although the Commission, in determining the refunds to be ordered, found even on the low value of plaintiff in error's intrastate property as fixed by the Commission for the year 1933, and upon the Commission's own findings in respect of revenues, expenses and net income for that year, that plaintiff in error was earning only a barely compensatory return for that year and therefore upon such finding made no order of refund against plaintiff in error for the year 1933, nevertheless, the Commission has refused to consider and give effect to the same evidence, in respect of plaintiff in error's present and future rates.

"23. The Commission erred in its findings and orders in failing to continue the existing rates of plaintiff in error in effect for the present and future and in overruling the written requests of plaintiff in error so to do filed in this cause on February 17, July 31 and August 29, 1934.

"Plaintiff in error showed the Commission that if permitted it would prove that if either of the revisions of rates proposed by the Commission should be made effective the result would be to reduce plaintiff in error's net income from its intrastate business in Ohio for the year 1934 by more than $1,800,000 and to permit it to earn less than 3½% for the year 1934 on the present fair value of its property employed in its intrastate service in Ohio. The Commission found that for the year 1933, plaintiff in error had earned only a barely compensatory return.

"It was the duty of the Commission under the evidence in this cause and its own findings to determine that the

existing rates of plaintiff in error were no more than just and lawful rates to be charged for the present and future until modified in accordance with law, but if the Commission proposed to make any reduction in the existing rates, plaintiff in error was entitled to a hearing and the right to introduce evidence as to the fair value of its property, its revenues, expenses, net income and fair rate of return for the year 1934, and thereby to prove that any such reduction would be unlawful and unreasonable.

"The action of the Commission is denying plaintiff in error's request and in requiring it to render future services in Ohio at admittedly confiscatory rates has deprived plaintiff in error of its property without due process of law and denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"24. The Commission erred in overruling, denying and in failing to comply with plaintiff in error's several applications and requests filed on February 17, July 31, August 29, and September 25, 1934, asking: (1) that the Commission modify said findings and order of January 16, 1934, by finding, deciding and ordering the rates then and now charged by plaintiff in error for its services rendered in the State of Ohio to be no more than just and lawful rates and by fixing and establishing such rates as the rates hereafter to be charged and collected by plaintiff in error for its services until changed or modified in accordance with law; (2) that the Commission permit plaintiff in error in accordance with the requests theretofore made by it and thereby renewed to introduce evidence of the fair value of its property, its revenues and expenses and net income in each of said separate cases where plaintiff in error was and is collecting rates pursuant to bonds; and (3) that the Commission afford plaintiff in error an opportunity to examine, analyze, explain and rebut the price trend information considered by the Commission in arriving at said findings and order of January 16, 1934, and the Commission's method of applying the same, which information was at no time exhibited to plaintiff in error or in-

troduced in any open hearing or made a part of the record in said cause, and to which information plaintiff in error had never had access and as to which method it has never been informed.

"The action of the Commission in so denying said applications and requests has deprived plaintiff in error of its property without due process of law and has denied to it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"25. The Commission erred in requiring plaintiff in error to repay unstated portions of its intrastate toll rates collected under bond 'to the persons, subscribers and patrons paying the same, notwithstanding payments for said services were made by such persons and patrons to telephone companies other than The Ohio Bell Telephone Company because of the interchange of telephone service.' Plaintiff in error cannot lawfully be required under the terms of the applicable Ohio statutes and the conditions of the bonds executed by it to make any refunds except to persons who are its subscribers or patrons.

"26. Plaintiff in error has been denied a fair trial and hearing in respect of the fair value of its property; it has been denied a fair trial and hearing in respect of whether the rates put into effect under bond in its several exchanges and its toll system were excessive and unreasonable in each separate case in which such rates were made effective pursuant to bond and it has been denied any trial with respect to the just and reasonable rates for its present and future service. Such denials have resulted in depriving plaintiff in error of its property without due process of law and denying it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"27. The Commission erred in its order of September 6, 1934 in requiring the repayment by plaintiff in error to its intrastate toll users of the sum of $232,282 for the year 1925 and the sum of $176,845 for the year 1926 without having made a determination of the fair value of plaintiff in error's property and its revenues, expenses and net income

in such intrastate toll system. There was no evidence upon which the Commission could have based any finding that plaintiff in error had, in any year, made any excessive earnings in its toll system.

"Plaintiff in error demanded the right to prove the fair value of its property used in rendering its intrastate toll service and to show the net income from such property. The Commission refused to receive such evidence. Therefore, it could make no valid order requiring any refunds to be made by respondent on account of toll rates collected under bond and the Commission's orders in this respect deprive plaintiff in error of its property without due process of law and deny it the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"28. The Commission erred in its order of September 6, 1934 in the following respects and each thereof:

"(a) It denied the protest and application and petition of the plaintiff in error asking, for the reasons and upon the grounds set forth therein a rehearing with respect to the matters and things decided and determined by the finding and order made and entered herein upon July 5, 1934;

"(b) In finding, as set forth in said order of September 6, 1934, that it had accorded plaintiff in error ample opportunity to examine and consider all necessary and pertinent information requested in plaintiff in error's application and request directed to the Commission's order of July 5, 1934, and in overruling said application and request;

"(c) In overruling the verified return of plaintiff in error to the rule to show cause contained in the Commission's findings and order of July 5, 1934 and the prayer thereof;

"(d) In ordering that all protests and objections to the Commission's finding of July 5, 1934, filed and made by plaintiff in error, inconsistent with the order of September 6, 1934, be overruled.

"29. The Commission further erred in overruling on October 19, 1934, (a) the protest, application and petition of plaintiff in error for a rehearing filed on October 1, 1934, and (b) its said application for a stay, postponement and suspension of the enforcement of the orders of the Public Utilities Commission of Ohio in so far as they order and direct plaintiff in error to make the repayments and refunds ordered by the Commission.

"In each and all of the foregoing respects complained of, and in denying plaintiff in error's protests, applications and petitions for rehearing, the said proceedings, acts, findings and orders of the Commission and each and all thereof affect materially the substantial rights of plaintiff in error, are erroneous and prejudicial to it and are unlawful, unreasonable and are not supported by evidence, are against the weight of the evidence and contrary to the evidence and the law and in violation of the applicable Ohio Statutes and of Article 1, Section 1 of the Constitution of the State of Ohio, and, further, are confiscatory and will, if enforced, result in the confiscation of plaintiff in error's property and deprive it of its property without due process of law and deny to plaintiff in error the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

"Each and all of the foregoing grounds and specifications of error were urged and relied upon by plaintiff in error in said protests, applications and petitions for a rehearing filed by it in cause No. 3307 on the docket of the Commission.

"WHEREFORE, plaintiff in error prays that said findings and orders of defendant in error, the Public Utilities Commission of Ohio, made and entered in said cause No. 3307 on September 6, as well as the orders of January 16, March 1, July 5 and July 9, 1934, in so far as said findings and orders form the basis for or are incorporated into the findings and order of September 6, 1934, and each of them, be reversed, vacated and set aside by this Court as unlawful and unreasonable and that plaintiff in error may be restored to all things lost by reason thereof."

The various findings and orders made by the commission and the procedural steps taken by the company are brought in to the record through exhibits "A" to "U" inclusive. These exhibits are too voluminous to carry into this statement and we are content to set out a list of same, with designating letter.

"A" Tentative Finding of January 10, 1931.

"B" Order of January 10, 1931, fixing value.

"C" Protest of the Ohio Bell Telephone Company to value fixed in order of January 10, 1931.

"D" Findings of January 16, 1934.

"E" Order of January 16, 1934.

"F" Application for Rehearing of January 16, 1934, order.

"G" Application and Request of the Ohio Bell Telephone Company of February 17, 1934.

"H" Order of March 1, 1934.

"I" Application for Rehearing of March 1, 1934, order.

"J" Order of July 5, 1934.

"K" Order of July 9, 1934.

"L" Application and Request of the Ohio Bell Telephone Company of July 31, 1934, with respect to the order of July 5, 1934.

"M" Application and Request of the Ohio Bell Telephone Company with respect to the order of July 9, 1934.

"N" Verified Return to the order to show cause contained in the order of July 5, 1934.

"O" Verified Return to the order to show cause contained in the order of July 9, 1934.

"P" Protest and Application for Rehearing of July 5 and July 9, 1934, orders.

"Q" Protest and Application for Rehearing filed August 29, 1934.

"R" Order of September 6, 1934.

"S" Application and Request of the Ohio Bell Telephone Company of September 6, 1934.

"T" Protest and Application for Rehearing of September 25, 1934, with respect to the order of September 6, 1934.

"U" Application to the Commission for a stay.

The commission took judicial notice of the trend of prices during the years involved in this proceeding and for the purposes of its determination and finding referred to and considered a periodical publication known as The Engineering News Record, and the company avers used other sources of information to it unknown; also, considered prices of materials furnished by manufacturers of telephone equipment and land values as ascertained from tax valuations, all of which it is claimed was erroneous. That on February 17, July 31, and September 25, 1934, the company filed written requests with the commission asking it to disclose the evidence upon which it arrived at price trends, all of which was refused.

With the mechanics governing the proper distribution of the refunder herein, this court at this time has nothing to do.

This fact is in dispute.

The petition in error and the exhibits make up the entire record of the case. For the means used and the methods followed by the commission in determining the rate base and rate of income, reference must be had to the petition in error, exhibits and briefs of counsel.

Mr. Karl E. Burr, Mr. W. H. Thompson, Mr. W. B. Stewart and *Mr. Ashley M. Van Duser,* for plaintiff in error.

Mr. John W. Bricker, attorney general, and *Mr. Donald C. Power,* for defendant in error.

By the Court.

Valuation Including Price Trends.

As of the date certain of June 30, 1925, the commission fixed the tentative valuation of the company's property at $104,282,735. Subsequently this was reduced $10,575,247. Item by item the company complains about the commission's figures such as those relating to right of way, land, buildings, central office equipment, distributing system, undistributed construction costs, going concern value and construction work in progress. However, a laborious study of the super-abundant record of approximately 70,000 pages dis-

closes a sharp conflict of competent evidence on every point, and under such circumstances this court cannot properly hold that the findings of the commission are against the weight of the evidence. Illustrative of this fact is the matter of intangible, undistributed construction expenditures. One witness expressed the opinion that the allowance for this item should be approximately $19,088,000; another that it should be $18,525,000; another that it should be $16,000,000; and still another that it should be $12,000,000. The commission after hearing and seeing the witnesses allowed $12,650,143. Certainly this court is at least in no better position to appraise the value of this conflicting testimony.

It is contended that there was failure to consider certain vital elements in determining questions of valuation. For instance, the claim is made that the commission excluded from the property value money necessarily invested in construction work which was in progress in an average annual amount of $3,000,000 for the nine-year period.

The commission held that no allowance could be included for this work in determining value for rate-making purposes, because the property was not complete and ready for service and therefore not used and useful property in the service of the public within the meaning of Sections 499-8, 499-9, 614-20 and 614-23, General Code. An allowance was made, however, for the item of interest during construction, which fully and adequately compensated the company for the use of its capital which was invested in unfinished construction work, and the amount of allowance so made entered into the rate base which was fixed by the commission. Furthermore, allowance was made for capital so invested as soon as the new construction came into use, and provision was also made for the capitalization of materials used in construction and inventories on hand before they were used in the process of construction.

It is also contended that no consideration was given to the cost of property and the cost of reproduction of property. It may be conceded that such costs are relevant facts to be considered in determining values. *Los Angeles Gas & Electric Corp. v. Ry. Comm. of California*, 289 U. S. 287, 306, 77 L. Ed., 1180, 53 S. Ct., 637.

In support of its contention that cost of property was ignored, the company offered a table which purports to show cost of the company's intrastate property aside from construction work in progress, and similar facts. But there is nothing in the record to show that the evidence so offered was not considered, along with the other evidence in the case relating to cost, in determining the rate basis.

As to the claim that the commission did not consider cost of reproducing property, the record discloses that evidence was adduced relating thereto and there is entire absence of a showing anywhere in the record that the commission failed to give proper consideration to such evidence bearing upon the question of expense of reproducing essential property.

A careful consideration of all claims of the company relating to alleged omissions or failure to consider certain elements of value discloses that the contentions are not borne out by the record. In fact, it appears that the commission determined its rate base from all the evidence before it, including that relating to these alleged ignored items, and thus reached the conclusion it did relative to the basic valuation fixed for determining a fair and reasonable rate.

Likewise the company strenuously complains because, although neither side introduced evidence of price trends, the commission took judicial notice of such trends; but even a casual examination of the decisions of the United States Supreme Court unquestionably discloses definite and repeated sanction of this principle.

In the case of *Central Kentucky Natural Gas Co. v. Railroad Commission of Kentucky*, 290 U. S., 264, 78 L. Ed., 307, 54 S. Ct., 154, Mr. Justice Stone stated that one ground for reversal of the judgment of the lower court was its exclusion "from consideration the profound changes in values, costs of service, consumption of commodities and reasonable return on invested capital which we judicially know took place during the period of more than five years while the case was pending before the Commission and the Court." Then in the ninth paragraph of the headnotes of

that case, as reported in 78 L. Ed., appears the statement that "judicial notice may be taken of changes in values, cost of service, consumption of commodities and reasonable return on invested capital which have taken place during the period while a case was pending before the Utilities Commission and the Court."

In the later case of *Dayton Power & Light Co. v. Public Utilities Commission of Ohio*, 292 U. S., 290, 78 L. Ed., 1267, 54 S. Ct., 647, Mr. Justice Cardozo said that "in view of business conditions, of which we take judicial notice, • • • the rate allowed was adequate." Then in the twenty-fourth paragraph of the headnotes of that case in 78 L. Ed., it is stated that "the Supreme Court of the United States takes judicial notice of business conditions."

In the *Dayton case, supra*, Mr. Justice Cardozo cites the case of *Atchison, Topeka & Santa Fe Ry. Co. v. United States*, 284 U. S., 248, 76 L. Ed., 273, 52 S. Ct., 146, in which Mr. Chief Justice Hughes said that "There can be no question as to the change in conditions upon which the new hearing was asked. Of that change we may take judicial notice." Then in the second paragraph of the headnotes of the case in 76 L. Ed., appears the statement that "the Court may take judicial notice of a general economic depression."

In view of these authorities it is readily apparent that the commission committed no error in this respect.

Operating Expenses.

In the matter of operating expenses, the commission apparently accepted and applied the testimony of the company in the consideration and determination of most of the items involved. That was true as to the very important item covering cost of current maintenance, including salaries, in which there was no reduction whatever from the claims of the company.

We shall refer particularly to the amount urged by the company for allowance for license contract services. These charges were seriously challenged by the commission. They have reference to certain services furnished the Ohio Bell Telephone Company by the American Telephone &

Telegraph Company and other associated companies, compensation for which was computed at a stated per cent of the gross revenues.

Such license contract provides that the licensee was to receive from the licensor in addition to all other services and benefits accruing to the licensee, the described services and privileges which have been briefly summarized as follows: (a) The right to use all telephonic devices covered by patents owned by the licensor and all new improved apparatus in the art of telephony resulting from experimental work under the direction of the licensor, and protection against all suits for infringement. (b) The continuous prosecution by the licensor of research work in the development of the art and the plans designed to promote economy and efficiency in equipment of the plant of the associated companies. (c) Advice in engineering, traffic, operating, commercial, accounting, patents, legal, administrative and other matters pertaining to the successful conduct of the telephone business. (d) Advice and assistance in any financing required to be done by the licensee in the extension of its plant or improvement to its system, and assistance in marketing licensee securities and other necessary financial support. (e) The right to extend to subscribers of the licensee the connections provided between its system and the system of other associated companies and their subscribers. (f) Active assistance in connection with such measures as will best protect the health of employees and in other ways conserve the high quality of service and maintenance by the licensor of various pension and insurance plans. (g) The right of the licensee to extend to its connecting companies the benefit of the advice and information that the licensee may receive from the licensor.

In order that the services may be promptly performed the licensor was to (a) Render available for use of the Bell Company all products of the licensor's research and all inventions, etc., relating to the art of telephony, which, after investigation, are pronounced by the technical experts of the licensor to be of practical use. (b) Maintain continuously an organization of specialists to relieve the licensee from the necessity of performing such work. (c) Maintain facili-

ties for connection between the system of the licensee and the system of other associated companies.

The contract provides for full service between the exchange of the licensee and the toll lines of the licensor setting out provisions for payment of interline service.

The company classifies the costs for services claimed to have been rendered, but which were rejected in whole or in part by the commission, in the following departments: Development and research; information; personnel; public relations; treasurer's; comptroller's; secretary's; administration and general service; operations; depreciation of telephone instruments; contingent liability for patent infringement.

The commission was of the opinion that valuable service was rendered the Ohio Bell Telephone Company by the American Telephone & Telegraph Company, which concededly is the parent corporation, and that a substantial portion of the payments claimed to have been made to defray the costs of the parent company in providing such service should be, and they were, accordingly, allowed. It found, however, that a portion of the payments so claimed resulted in no benefit to the Ohio Bell Telephone Company and should not be included as a part of its operating expenses. In view of the uncertain and indefinite character of the proof based in great measure upon estimate and opinion, if not conjecture, it cannot be said that the findings and conclusions of the commission were unfair or unreasonable, and certainly there is no basis for finding that they were unlawful.

The commission followed the admonition of the Supreme Court of the United States in the Illinois proceeding reported in *Smith et al., Commerce Comm., v. Illinois Bell Telephone Co.*, 282 U. S., 133, 75 L. Ed., 255, 51 S. Ct., 65, and *Lindheimer et al., Commerce Comm., v. Illinois Bell Telephone Co.*, 292 U. S., 151, 78 L. Ed., 1182, 54 S. Ct., 658, and endeavored to ascertain the cost to the American Telephone & Telegraph Company of the service furnished by it to the Ohio Bell Telephone Company. It did not and was not bound to accept fully and unconditionally the statements of the company as to the amount claimed to have

been paid to the parent company; nor was it concluded thereby as to the reasonableness or propriety of such service; nor bound to regard the amount paid as the true value of such service to the Ohio Bell Telephone Company. Just as in other respects, its findings and conclusions upon these items will not be disturbed unless shown to be manifestly against the weight of the evidence or in contravention of law.

For instance, the commission allowed the claim for engineering service in its entirety. On the other hand, it denied in its entirety the claim made for services rendered in its information department, it having found that the general advertising of the American company, national in scope, did not relate to the Ohio Bell Company as such, and that such general advertising should not be paid by the Ohio telephone users.

The commission found that the department of development and research did much for the benefit of the associated companies. It rejected some of the costs and expenses claimed because not related to Ohio Bell telephone operations. These charges were for television, radio, submarine, cable and other similar items.

In the so-called personnel department, many items of cost were allowed as claimed, those disallowed having been found rather in the interest of the holding company than of the licensee and hence not proper charges against the rate payer of the operating company.

So also as to the public relations department, the commission found that no part of such cost should be considered in determining the rate to be paid by the Ohio telephone user for the same reason.

The partial disallowance of the charges made for the treasurer's and comptroller's departments, and the total disallowance of the charges of the secretary's department and the department of operations, were likewise based upon its finding that those services were solely for the benefit of the parent company. The so-called general service bureau is referred to as a coordinating department in which general administration costs were included. It seems to be a

sort of catch-all for items that might possibly have been omitted from some classification. The allocation was uncertain and unsatisfactory. The commission was probably about right when it allowed half of the amount claimed. The same may be said of its allowance for depreciation of telephone instruments.

It does not appear how there could be justification for a specific allowance for contingent liability for patent infringements, for it does not appear that there has been any actual cost to the American company in the way of loss or damage because of patent infringements of apparatus used by the Ohio Bell Telephone Company, and the mere possibility is too remote and speculative to warrant a charge against the telephone user. So the commission found, and their finding seems commendable.

We deem it unnecessary to discuss in detail each of these specific claims of expenditure for service rendered by the parent company. Suffice to say that from an examination thereof we are of the opinion that the conclusions reached by the commission were just and the allowances made fair and reasonable, and hence should not be disturbed.

The item, expense of depreciation, was recognized by the commission as a legitimate part of the operating costs. The elements of maintenance and of essential replacements were regarded as factors, and it was conceded that the telephone user must, as part of his rate, provide funds to meet the wear and tear upon the physical plant resulting from the year's operations, and such expense entered into the calculations of the commission, as disclosed by its detailed findings. Its findings and conclusions thereon were apparently reached after careful consideration of the volume of testimony introduced and record evidence placed before it, and we find no warrant for their disapproval.

Depreciation.

The commission makes the unchallenged statement in its brief that "With the exception of the amounts claimed by the company for the expense of depreciation, license contract costs and Western Electric purchases chargeable

to expense, the commission allowed without question all of the operating expenses contended for by the company."

There are two sections of the General Code of Ohio expressly dealing with the subject of "depreciation" in relation to public utilities.

Section 614-49, General Code, provides: "Every public utility shall carry a proper and adequate depreciation or deferred maintenance account, whenever the commission after investigation shall determine that a depreciation account can be reasonably required. The commission shall ascertain, determine and prescribe what are proper and adequate charges for depreciation of the several classes of property for each public utility. The charge for depreciation shall be such as will provide the amount required over and above the cost and expense of maintenance to keep the property of the public utility in a state of efficiency corresponding to the progress of the art or industry. The commission may prescribe such changes in such charges for depreciation from time to time as it may find necessary."

It is further provided, in Section 614-50, General Code, that "The moneys for depreciation charges thus provided for shall be set aside out of the earnings and carried as a depreciation fund. The moneys in such fund may be expended in new construction, extensions or additions to the property of the public utility, or invested, and if invested the income from the investment shall also be carried in the depreciation fund. Such fund and the proceeds thereof, may be used for the purpose of renewing, restoring, replacing or substituting depreciated property in order to keep the plant in a state of efficiency. Such fund and the proceeds or income therefrom shall be used for no purpose other than as provided in this section, except upon the approval of the commission."

In the case of *Lindheimer v. Illinois Bell Telephone Co., supra,* Mr. Chief Justice Hughes succinctly defines "depreciation" as "the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence."

Upon the merger or consolidation of September 21, 1921, the company began business with property having a book value of $77,839,932 and a depreciable value of $69,070,160. Several additional properties of considerably smaller valuation were acquired afterwards. With perhaps one exception they were taken over at net cost, with no reserve for accrued depreciation or amortization.

The commission found that from the date of merger the company pursued the policy of keeping its property in good condition and in a high state of efficiency, expending for current maintenance and repairs from the time of merger to the date certain, viz., June 30, 1925, the sum of $16,385,139, and from the date certain to December 31, 1931, the further sum of $42,064,639, which the commission denoted as liberal.

While expending the sums mentioned for current maintenance and repairs, the company's net charges to reserve for depreciation from the date of merger to the date certain were $11,349,664, and from the date certain to December 31, 1931, amounted to $40,956,301.

As is pointed out in the *Lindheimer* case, *supra*, it is extremely difficult as a practical matter to draw a definite line between funds accredited to current maintenance and repairs and those allocated to depreciation. It stands to reason that when proportionately large amounts are expended in maintaining the plant of a public utility in a high state of efficiency and good condition, the amount necessary for depreciation expense should be correspondingly less. *Pioneer Telephone & Telegraph Co. v. State*, 64 Okla. 304, 167 P., 995, L. R. A., 1918C, 138.

In view of our future remarks on the subject of depreciation as it pertains to this case, it would now seem appropriate to call attention to certain pronouncements of the Supreme Court of the United States in the *Lindheimer* case, *supra*. It was there said in substance that where a public utility complains that rates ordered by a regulatory body are confiscatory, the utility "has the burden of making a convincing showing that the amounts it has charged to operating expenses for depreciation have not been excessive," and that since charges to depreciation

should be representative of the expense occasioned to the public utility by the using of physical property employed as fixed capital, excessive charges for such object have the wrongful and indefensible effect of requiring patrons to provide capital contributions, not to make good losses incurred by the utility in the service rendered and thus keep its investment unimpaired, but to secure additional plant and equipment upon which the utility expects a return.

Since in the instant case the amounts charged to depreciation were included in the rates imposed against the company's subscribers, the commission felt obligated to investigate the matter of depreciation from the date of merger through the year 1933, to arrive at a fair and just result.

There can be little argument that when the consolidation of 1921 occurred, and upon the acquisition of additional properties, the company should have provided from capital contributions or charged to surplus the amount necessary to replace worn out, obsolete and useless units.

From evidence presented the commission found that at the date of merger the company's property was actually in a per cent condition approximating 83 per cent, which required a depreciation reserve of $14,638,870, but that with depreciable fixed capital of $69,049,424, a depreciation reserve of only $6,219,829 was supplied, according the property an erroneous per cent condition of about 91 per cent.

While admittedly the company made extensive replacements and improvements between 1921 and 1925, with an annual increase in depreciation reserve, the per cent condition, according to the company's records, steadily declined, reaching a low of 87.51 per cent on the date certain.

Obviously, this presented an extraordinary situation and suggested to the commission that the charges to depreciation reserve during the initial years of the company's existence were in excess of the inadequate amount furnished for depreciation at the date of merger, and that in order to sustain a credit balance in the depreciation reserve to make good the original deficiency, the company included excessive amounts for depreciation in its charges to current

operating expenses, which were reflected in the rates to subscribers.

In support of this conclusion, the commission engaged in an elaborate set of calculations covering the period from September 21, 1921, through 1933, included in its brief in tabulated form.

This table purports to show that from September 21, 1921, through the year 1924 the company retired its original depreciable plant to the extent of a net realized depreciation of $8,479,728, which indicated too much retirement in too short a time, in light of the erroneous 91 per cent condition accorded the depreciable property by virtue of the insufficient depreciation reserve set up in the beginning.

Upon computations extending through 1933 the commission found that the total charges against the reserve for depreciation were $59,339,088, of which $38,270,252 was covered by the additions to the reserve since September 21, 1921, $6,219,829 was covered by the reserve in existence as of September 21, 1921, and $14,849,007 was representative of the amount of realized depreciation in excess of the credits which had been made to the depreciation reserve on the assets replaced.

Under a maze of figures, the continuation of which would but lend to confusion, the commission contended that the company should have begun operations with additional reserve for depreciation of $14,849,007, or that this amount should have been charged to surplus.

On the basis of "per cent condition," the commission determined that the company's initial reserve for depreciation should have been $14,638,870, instead of $6,219,829. Such discrepancy resulted in the elimination of the difference, viz., $8,419,041, as charges against the depreciation reserve, representing as it did losses antedating the merger, and which the company had charged to operating costs thereafter, at the expense of its subscribers.

Thus, the commission was unable to escape the conclusion that the company had commenced business with a grossly inadequate depreciation reserve, and that this deficiency together with appreciable replacements and changes made necessary by consolidation, which should

have been contributed by capital or taken from surplus were financed by abnormal depreciation charges and corresponding credits to the depreciation reserve during twelve and one-quarter years of the company's existence, and especially up to and including the year 1931.

Substantiating its findings that the company from its beginning had created an excessive reserve for depreciation to absorb the amount which should have been furnished at the start, the commission points out in its brief that from 1922 through 1931 the company's composite depreciation rate ranged from 5.68 per cent to 5.92 per cent, but that it was voluntarily reduced in 1932 to 4.50 per cent, and to 4.18 per cent in 1933, thus tending to show final absorption of the deficiency in the depreciation reserve during the year 1931.

After digesting the mass of evidence presented to it on the question of depreciation, the ultimate function of the commission was to fix a composite rate to be applied annually from the year 1925 to maintain a proper depreciation reserve.

It is to be remembered that the commission did not challenge the charges of the company for maintenance and repairs, which were generous, or any depreciation expense except the major item relating to telephone plant and equipment. Neither did it disturb the depreciation expense charged between September 21, 1921, and the year 1925, which was found to be excessive. The future was its concern in the light of what had transpired in the past.

Proceeding to fix the annual composite rate for depreciation expense, effective from 1925, the commission found that from the date of merger to the date certain the company annually charged as depreciation expense an average composite rate of 5.50 per cent, and that its net charges to reserve for depreciation during the same time were equal to an annual composite rate of 3.74 per cent.

Taking into consideration the substantial sums spent by the company in the years preceding and following the date certain for maintenance and repairs, and that the depreciable property of the company was in a good, improved and up-to-date condition as of June 30, 1925, the commis-

sion decided that a composite rate of 4 per cent was just and fair to provide for annual statutory depreciation, and that it should be applied from 1925 forward.

It appears in the case of *Michigan Public Utilities Commission v. Michigan State Telephone Co.*, 228 Mich., 658, 200 N. W., 749, that the commission had fixed a rate of depreciation at four per cent of the total fair value of the company's depreciable property. The Supreme Court of Michigan in upholding such action said:

"Probably in a majority of the cases a higher rate has been sustained. But this is a question of fact depending largely upon the character, nature and age of the property in question, and illuminated somewhat by the experience of the company respecting the subject. And it must not be overlooked that, as the cases show, many minor replacements, and repairs and maintenance are made and charged to operating expense. In practice, this contributes considerably toward keeping the property intact. The commission in its opinion * * * reviews the question at length, and states fully the experience of the company respecting the rate of depreciation and the accumulation of the fund. The rate fixed is comparatively low, but, in the light of the facts of this case, we must decline to hold it confiscatory."

As authority for the proposition that the past experience of a public utility affords a tenable foundation upon which to establish the rate that should be allowed in the future for annual depreciation, the commission relied on the case of *Smith v. Illinois Bell Telephone Co., supra.*

The value of the company's depreciable property having been fixed at $84,330,894 as of the date certain, the amount allowed for depreciation expense for the year 1925 at 4 per cent was $3,373,236. The commission further prescribed that depreciation expense for subsequent years should be based on the determined value of the depreciable property at the date certain plus net additions thereto. Consequently, from the years 1925 to 1933, inclusive, the depreciation allowance to the company under the commission's order amounted to $45,266,614, being some $17,267,353 less than claimed by the company upon higher con-

posite rates and higher valuation, which it contends are reasonable.'

Naturally, the company registers vigorous protest to the methods pursued by the commission, arguing that it had no right to rest its calculations on the period preceding the date certain, disregarding the actual retirement losses of the company during the time for which refunds were ordered. The company earnestly maintains that its actual realized retirement losses from 1925 to 1933, inclusive, were $8,364,256, and that its true expense of depreciation during such time was some $16,000,000, which no one disputes, and that they have been entirely ignored through the erroneous course adopted by the commission; to which the commission replies that if the company had commenced business with a proper depreciation reserve of $14,638,870 instead of $6,219,829, and if certain properties acquired since September 21, 1921, had had reasonable depreciation reserves, the company would have had an ample reserve on December 31, 1933, of $14,652,468.

The conflict between the company and the commission is apparent. The former insists that computations should be confined to the period between 1925 and 1933, while the latter has seen fit to extend its inquiry to the beginning of the company's existence.

"Depreciation" is inherently a complex subject. It becomes more so when the particular enterprise under consideration is of great magnitude and millions of dollars are involved. In weighing and dissecting the evidence, a knowledge of law plays a minor part. One attempting a comprehensive grasp of the intricacies presented should be both a skilled engineer and a competent accountant, versed in the problems peculiar to the public utilities field.

We have made a conscientious examination of the voluminous evidence relating to "depreciation" and have analyzed it to the best of our ability with regard to the conflicting contentions of the adverse parties. There being substantial support for the findings and order of the commission on this feature of the case, they will be permitted to stand.

RATE OF RETURN.

The company complains that the rate of return allowed by the commission is inadequate and confiscatory. The rates of return allowed by the commission are as follows: 7 per cent for the years 1925 to 1929, inclusive; 6½ per cent for each of the years 1930 and 1931; and 5½ per cent for each of the years 1932 and 1933. These rates they find and declare were ample in the light of the economic conditions existing during the periods involved. A rather recent case dealing with this question is that of *Illinois Bell Telephone Co. v. Gilbert*, 3 F. Supp., 595, in which there is a discussion of the question quite timely and appropriate to the case before us. From that case we quote the following:

"A public utility enjoying the advantages of plaintiff is not entitled to the large earnings made by many undertakings during periods of great prosperity. On the other hand, its return in times of business adversity should not be reduced to the extent that the earnings of many private corporations have been impaired. The range of from 7½ per cent to 5½ per cent as found in this case gives weight, in our opinion, to all of the elements which under the ruling of the Supreme Court we are required to consider."

The court took judicial notice of the general decline in corporate earnings during the years 1931 and 1932 and said: "It is for this reason that we have fixed 6½ per cent as the proper rate of return for 1931 and 5½ per cent as the proper rate of return for 1932."

In *Dayton P. & L. Co. v. Public Utilities Commission, supra*, the Supreme Court of the United States, on page 311, in approving as adequate a rate of return of 6½ per cent, said: "In view of business conditions, of which we take judicial notice (*Atchison, Topeka & Santa Fe Ry. Co. v. United States*, 284 U. S., 248, 260), the rate allowed was adequate."

A rate of return deemed reasonable under generally prevailing normal economic conditions may be excessive in a period of economic depression, and a rate of return deemed reasonable in a period of depression may be wholly inadequate and confiscatory in a period of general pros-

perity. That a general economic depression prevailed during the years here considered requires no proof, and this court will, even as the Supreme Court of the United States did (*supra*), take judicial notice of that fact. The fact that the prevailing economic depression is reflected in a reduction in the rate of the return allowed to a utility does not necessarily render the rate of of return allowed confiscatory where the reduction made is reasonable in the light of prevailing conditions.

Another recent case in point, decided in February, 1925, is *Chesapeake & Potomac Telephone Co. v. Whitman*, 3 F. (2d), 938, wherein the court approved a 6 per cent return on the value of the telephone company property, and held that since the telephone company was an integral part of a nation-wide system and was assisted in its financing by the corporation controlling it, the rate of return allowed was not confiscatory. The court, on page 954, said: "• • • If the present company stood alone, either in the sense that it had, unaided, to look after its own financing, or that it did not form what is in reality an integral part of a nation-wide system we might well doubt whether a return of 6 per cent would be sufficient to enable it to raise the money necessary to its growth, and therefore, it may be, to its life; but such is not the case. It is owned and altogether controlled by the American Telephone & Telegraph Company, hereinafter styled the National company. In partial return for a substantial annual sum paid by it to the National company, the latter has agreed to assist it in its financing. • • • All that we hold is that, if the company be allowed as much as 6 per cent, its property has not been confiscated. • • •"

In the instant case, the commission, in its opinion, finds that the company "enjoys a virtual monopoly in the territory in which it operates; its business constitutes one of the most substantial and profitable utility businesses in the state; its properties are favorably located in serving many of the large and thriving communities of Ohio; its management is of a high grade of efficiency; its financial position, because of its subsidiary character, is of a very high order, and it has been able by reason thereof to secure funds for

its additions and betterments without going into the open market for money and there is no indication that it will be required to enter the public market for finances in the immediate future. It may be said the element of risk to the investor as applied to this company is negligible."

In *Smith v. Illinois Bell Telephone Co., supra*, the court, on pages 160, 161, said: "• • • In determining what is a confiscatory regulation of rates, it is necessary to consider the actual effect of the rates imposed in the light of the utility's situation, its requirements and opportunities. As was said in *United Railways v. West*, 280 U. S. 234, 249, 250 [74 L. Ed. 390, 408, 50 S. Ct. 123], a rule as to the rate of return can not be laid down which would apply uniformly to all sorts of utilities; 'what may be a fair return for one may be inadequate for another, depending upon circumstances, locality and risk.' In that case the court restated the general rule in the language of the opinion in *Bluefield* [*Water Works & Improvement Co.*] *v. Public Service Commission*, 262 U. S. 679, 692, 693 [67 L. Ed. 1176, 1182, 1183, 43 S. Ct. 675], as follows: 'What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.'

"It is evident that in the present case we are not dealing with an ordinary public utility company, but with one that is part of a large system organized for the purpose

of maintaining the credit of the constituent companies and securing their efficient and economical management."

In the case of *Wabash Valley Electric Co. v. Young*, 287 U. S., 488, 77 L. Ed., 447, 53 S. Ct., 234, the court held that a rate of return of 7 per cent for a public utility company supplying electricity would not be deemed so inadequate as to amount to a taking of property without due process because after taking care of debts and dividends there might be nothing left for surplus, where it appeared that the company had a surplus equal to nearly 28 per cent of its total stock and funded debt liability, and the fact that it was a subsidiary of a company by which its stock and securities were owned, and which also owned and financed other similar companies, made it reasonable to conclude that it was in a more favorable financial situation than if it were a disconnected enterprise.

From a consideration of these authoritative decisions, it must be concluded that the rate of return allowed by the commission is fair and just and hence should not be disturbed.

Upon the entire record we are of opinion that the findings and conclusion of the Public Utilities Commission of the state are neither unlawful nor unreasonable. Its order is therefore in all respects affirmed.

Order affirmed.

WEYGANDT, *C.J.*, STEPHENSON, WILLIAMS, MATTHIAS, DAY and ZIMMERMAN, *JJ.*, concur.

JONES, *J.*, not participating.

APPENDIX B.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO.

No. 3307.

In re Investigation and inquiry of The Public Utilities Commission of Ohio, upon its own motion, for the determination (a) of the fair value of the property of The Ohio Bell Telephone Company, toll and exchange (b) of the just and reasonable rates and (c) of reasonable rules and regulations for services furnished by said company to its patrons throughout the State of Ohio.

OPINION AND FINDING.

January 16, 1934.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO.

No. 3307.

In re: Investigation and inquiry of The Public Utilities Commission of Ohio, upon its own motion, for the determination (a) of the fair value of the property of The Ohio Bell Telephone Company, toll and exchange (b) of the just and reasonable rates and (c) of reasonable rules and regulations for services furnished by said company to its patrons throughout the State of Ohio.

Opinion and Finding.

January 10, 1931, Commission found tentative valuation of $104,282,736—Protests were filed by the company and by the State—One asserted Commission's valuation too low, the other too high—Real estate purchased by company

but not presently used and useful no part of rate base—Former finding as to labor cost adhered to—Progressive obsolescence to be considered—Property on date certain 87% condition—Interstate property and income distinguished from intrastate property and income—Not necessary to separate intrastate toll property and revenue from exchange property and revenue—Prices of Western Electric to Bell Company fair and reasonable, both prior to date certain and subsequent thereto, except for increase of November 1, 1930—Going Concern Value reconsidered—Direct and undistributed overhead costs allowed found to be sufficient to cover separate allowance of going concern value—$3,592,040 allowed in tentative valuation for going concern value now disallowed as a separate item—Distributed or direct overheads allowed as follows: Plant Supervision and Tool Expense $3,354,980; Incidental Expense $655,360; Supply Expense $2,188,885; Contingencies $145,553; Building Overheads $1,280,861; Western Electric Engineering Service and Inspection $1,100,378; Total of direct overheads $8,726,017, present value $7,496,264—Undistributed Construction Expenditures allowed as follows: Omissions 1%; Interest During Construction 6%; Engineering 5%; Taxes 1%; General Expenses 2%; Total 15%—Some of these allowances applicable to all the property and some applicable to only a portion thereof—Amount allowed Omissions $697,120; Interest During Construction $4,953,996; Engineering $2,779,056; Taxes During Construction $825,666; General Expenses $1,651,332; Total as of Date Certain $10,907,170; Total Overheads $18,403,434, 24.5% of total value of fixed capital exclusive of overheads—Right of Way fixed on book value at $1,243,034—Working Capital and Materials and Supplies $2,948,502—Statutory rate cannot be altered until Commission fixes different rate—Reasonable rate as of date certain fixed in consideration of predictable or experienced changes that it may produce a proper return for a reasonable time—Rate based upon value of property and net income at date certain, but future value fixed with consideration to price trends—Price trends considered and ascertained—Company-wide case instituted in October, 1924, for determina-

tion of valuation, expenses and rates of the company for its services as a whole—Commission's inquiry since proceeded on Company-wide basis without separate testimony in Pence Law Cases—Right of Commission to fix rate for separate exchanges by considering value of the property enmasse questioned—Company divided exchanges into groups and fixed rates—Company rates as fixed for each exchange represent balanced consistent rate for entire territory in harmony with value of property used in each exchange—Company and representatives of State and municipalities acquiesced in Company-wide treatment—Company estopped by its action during trial of the company-wide case to now test rate for each exchange by separate determination of value and net income—Commission justified in fixing rate in each municipality upon relative valuations recognized by Company when it grouped its exchanges—Valuation as of date certain found to be $93,707,488 being a reduction of $10,575,247 from the former tentative valuation—Rates for succeeding years fixed on consideration of conditions and betterments and price trends—Valuation of property over-emphasized—Years consumed on this problem with slight attention to revenues and expenses—This is common of most cases—At a return of 7% every million dollars of value effects rate payers only to the extent of $70,000 annually, less than ten cents for each subscriber—Based on 7% rate of return, each dollar of revenue and expense has fourteen times as much weight on the ultimate result as any dollar of valuation—Company required to make reservations for surplus, depreciation and contingencies and other proper matters—Commission required to ascertain adequate charges for depreciation—Utility entitled to earn fair return upon investment and to maintain property in state of efficiency corresponding to the progress of the art or industry—As depreciation reserve is earned, it should replace deteriorated, obsolete and useless items—Policy of company important factor in determining proper depreciation allowances—Company's property well maintained—In addition to expenditures for maintenance and charges to reserve for depreciation, company at date certain had accumulated reserve balance of $12,560,502, $228,739

being for amortization of intangible property—As of December 31, 1932, reserve for accrued depreciation and amortization $20,569,893, approximately $306,000 of which is reserve for amortization of intangible capital—Balance in reserve shows accumulated amount to replace depreciated property in future which customers have paid in advance of writing the property out of plant account—Definite relation between past accumulations from reserves and proper allowances for future—Up to December 31, 1931, book value of gross additions were $181,971,638 and gross reductions $88,419,086, disclosing that entire money value of fixed capital at September, 1921, date of merger of telephone properties in Ohio, became fully retired during 1931—The gross deductions at end of 1930 $74,674,366, within $600,000 of entire money value of fixed capital September 21, 1921—Composite rate of 3.74% of depreciable property expended annually amply sufficient considering large sums expended before and after date certain for maintenance and repair—Plant substantially reconstructed—Composite rate of 4% of depreciable property fair annual allowance for depreciation expense computed on present value of depreciable property as of the date certain and for subsequent years plus net additions—$3,373,236 fair amount to be allowed for depreciation expense for 1925 allocated between interstate and intrastate—Important questions raised by license contract with the A. T. & T. Co.—Amount of license fee 1923 4½% of gross earnings; January 1926 4%; January 1928 2%; and January 1929 1½%—Cannot agree with finding of Statutory Court in Chicago Case—Depreciation of instruments fixed at 3% instead of 6% as allowed by the Statutory Court—License agreement provides for services by the A. T. & T. Co. to its associate companies—Broad field occupied by A. T. & T. Co., owning many subsidiary companies and having wide field of operation—All license contract costs analyzed in detail and allowed in part and disallowed in part as appears on Appendix "H"—Other expenses including office, instrument, patent infringement, taxes and costs of financial transaction allowed in part and disallowed in part—Company entitled to fair return on value of property used—Company enjoys monopoly in ter-

ritory, business substantial, properties favorably located, management high grade, financial position favorable—Fair rate of return on value of intrastate property 7% for 1925 to 1929 inclusive; 6½% for each of the years 1930 and 1931 and 5½% for each of the years 1932 and 1933—Based on Commission's finding as to value, the Company received rates of return as follows: 1925, 8.95%; 1926, 9.01%; 1927, 8.79%; 1928, 8.57%; 1929, 8.09%; 1930, 7.52%; 1931, 7.64%; 1932, 6.18%; 1933, 5.51%—Company entitled to earn as its net income from intrastate business for 1925, $6,559,524; 1926, $7,123,734; 1927, $7,772,557; 1928, $8,569,241; 1929, $9,433,590; 1930, $9,469,398; 1931, $9,442,658; 1932, $7,349,411; 1933, $6,959,232—Company collected on intrastate business an excess net income as follows: 1925, $1,822,647; 1926, $2,041,483; 1927, $1,986,610; 1928, $1,925,301; 1929, $1,463,347; 1930, $1,481,689; 1931, $1,659,760; 1932, $908,335; a total of $13,289,172—No excess of net income for 1933—Finding that the rates for services rendered on the date certain are unjust and unreasonable and that the company be required to submit new schedules setting forth rates as of date certain, giving first consideration to proper reductions of increased rates, which shall produce net income not in excess of that found to be fair and reasonable—Order that of the excess net income there be repayments by company in the manner provided by law to consumers entitled thereto.

By the Commission (Geiger and Schaber concurring):

On January 10, 1931, this Commission found the tentative valuation of the property of The Ohio Bell Telephone Company used and useful in furnishing service within the various municipalities of the State of Ohio together with the value of the property used for toll service, both interstate and intrastate, to be as of June 30, 1925—$104,282,735. (See Annual Report of the Public Utilities Commission of Ohio, 1931, pages 61, *et seq.*)

The Commission in announcing its opinion at that time set out in such detail the development of the several rate cases affecting various exchanges into the present company-

wide case through its order of October 14, 1924, that the same need not be here repeated.

Protests Filed.

On February 7, 1931, and February 9, 1931, the Company, the Attorney General and special counsel and the law directors and city solicitors of many of the cities in which the Company operates, associated with the Attorney General, filed their respective protests to the valuation so fixed by the Commission. The protests cover many points in such detail as to preclude specific enumeration, but they may be briefly summarized as follows:

Protest by the Company.

The Company protested the valuations, both reproductive and present, in that the same are inadequate, incomplete, inaccurate and too low, both in the aggregate and in the respects detailed in said protest. The Company claims that both in the aggregate and with respect to the separate accounts the true value of the property is substantially in excess of the value found by the Commission, and asserts that in all respects set out in its protest the finding of the Commission is unlawful and that if the same became final, the valuation would result in confiscation of the Company's property and would deprive it of such property without due process of law.

Protest by the State and Municipalities.

The protest filed on behalf of the telephone users of Ohio and of the municipalities and communities thereby affected is directed against the tentative valuation for the reasons specifically set out, in which it is claimed that the Commission's valuation is too high with respect to the accounts enumerated in said protest which cover substantially the entire property of the Company. The alleged excessive valuations of each class of property are specifically enumerated.

In short, each side protested the tentative valuation fixed by the Commission for the reason that the Commission had

not adopted the valuations claimed by each, one side asserting that the Commission's valuation is too low and the other too high.

Due to the fact the late Attornies General of the States, who by the statute were required to designate the legal advisor of the Commission, have throughout this proceeding acted on behalf of the telephone users of the State in an adversary capacity, the Commission has been compelled to proceed without the benefit of counsel.

The Commission does not feel called upon to go into a detailed re-examination of all the evidence which led it to make its tentative valuation, but will confine itself to matters particularly stressed in the protests and supporting briefs, or which are drawn in question by decisions of the Supreme Court of the United States and other courts announced subsequent to the Commission's tentative finding, or by the application of principles announced in recent decisions of high courts on pertinent matters.

Matters Stressed in Brief.

While counsel for the Company at the time of the filing of its protest to the tentative valuation filed no formal brief, they have since prepared and submitted as of October 17, 1933, a very exhaustive brief covering over three hundred printed pages in answer to the brief of counsel for the state and associates filed August 18, 1933.

These briefs impose upon the Commission the duty of considering all matters thus called to its attention, whether they relate to that portion of this case which preceded the Commission's finding of value as heretofore announced or relate to matters presented at a subsequent date.

While we will take up the several matters presented by each counsel for orderly disposition, it may not be possible to discuss them in the order followed by counsel nor to specifically refer to each point stressed in the respective briefs.

Specific Criticisms by Company's Counsel.

It is asserted by counsel for the Company that, reduced to lowest terms, the State's brief establishes the case of the

Company, not only for its present rate, but for substantially higher rates, for the reason that it is only by urging in the State's favor all the points decided by the Commission against the State and all the points decided by the Federal Statutory Court against the city of Chicago, Ill. in the case of the Illinois Bell Telephone Company *v.* Gilbert *et al.*, Fed. Supp., 595, that the State is able to arrive at rates of return therein set out varying from the high of 8.37% in 1926 to the low of 6.33% in 1931. Counsel for the Company point out that as contrasted with these rates of return and adopting the Commission's tentative value of $104,000,000 and conceding all the adverse holdings of either the Commission or the Federal Court, the rate of return upon the intrastate property would vary from the low of 4.28% in 1932 to the high of 6.24% in 1926.

It is urged that the Company's return has fallen short of a fair return by amounts varying from the high in 1930 of $3,254,877 to the low of $1,119,050 in 1928.

Real Estate.

Counsel for the Company criticise the Commission in its refusal to allow as part of the rate base the value of the real estate acquired by the Company but not presently used, and cite many cases in which it has been held that such property should go into the rate base on the theory that there is an obligation on the Company to acquire selected pieces of real estate advantageously located at favorable prices in anticipation of future use, rather than to await the time when such real estate is actually needed and must then be acquired at greater price.

The Commission based its refusal to allow the value of such real estate to go into the rate base upon the theory that the statutes of the State are explicit in that only used and useful property shall be included in the rate base and that lands purchased for future use, if not actually used on the date certain, must be excluded, but that their value may be considered to enhance the rate base as of the date when they are actually put in use. This has been done, as shown in Appendix "C."

We think this is in harmony with the holding of the Supreme Court as evidenced in the Logan Gas Case, 121 O. S., 507, and subsequent decisions of the Court and until there is a reversal of this, the Commission is bound by this declared position of our Supreme Court.

Labor Costs.

Company's counsel discuss at length (Brief, Page 23, *et seq.*) the assertion that the Commission should add to the value of the property an amount of not less than $12,000,000, which counsel claim was wrongfully withheld from the valuation by following the erroneous theory as to labor costs advanced by the witness Hagenah, it being claimed that had the Commission followed the actual experience of the Company as to costs of labor as disclosed by the Company's books when engaged in large enterprises, rather than the theory of Hagenah that labor prices should be computed as in a "wholesale construction," that there would have been added to the tentative value at least $12,000,000.

We have again given this matter consideration and do not feel justified in disturbing the former finding of the Commission upon this point.

Percent Condition.

A serious complaint is made by counsel for the Company (Brief, Page 33, *et seq.*) as to the finding by the Commission that the property on the date certain was in 87% condition rather than in 90% as claimed by the Company.

The 3% difference between the condition as found and the condition as claimed, translated into dollars, would add nearly $3,000,000 to the present value of the property, and is consequently of major importance.

Three witnesses for the Company, well qualified and familiar with the property, testified; one to a weighted average of 90.09%, another to 89.5% and the third to 90.01%, whereas Hagenah, the engineer for the State, testified to 87% condition.

The challenge of counsel has called upon the Commission to again read the testimony of these engineers, and it may be said that counsel have set out in their brief a fair

synopsis of the evidence of each. Counsel challenge the foundation for the statement of Hagenah that there is depreciation due to obsolescence and lack of utility.

The Commission, upon the original hearing, was impressed with the testimony of Mr. Hagenah and followed his estimate without an extensive discussion. The Commission also considered other evidence of condition, presented by the record.

This Commission has had occasion to discuss at length the question of obsolescense in Case No. 5672 in re Cambridge Home Telephone Company, Annual Report P. U. C. O. 1930, pages 117-128. It is there pointed out that Section 499-9, G. C. paragraph E, provides that the Commission shall find depreciation, if any, for *obsolescence*. The Commission there stated:

> "The advance of an art is constantly making effective the element of obsolescence, and such element does not assert itself at a given instant but develops gradually in proportion to the advance of the art."

In order that we may visualize this element of depreciation to which, under the statute, we must give consideration, we should consider that the property of the Company scattered throughout the various cities and villages of Ohio was undergoing a pronounced change, in that in many cities it was the result of the combination of two companies with duplicated property. It is true that it is claimed that the combination had been completed and the property had for some time been in operation as a single unit, but it also appears from the evidence that there was a continual change going on which required the elimination of many kinds of property which still had useful life, due to the progress of the art and due also to the ever present pressure of municipalities to rid their streets of overhead wires and poles. Much money has been expended by the Company in changing from aerial to underground construction.

These matters in our judgment, point to the fact that there was a solid basis for the former judgment of the Commission, that the element of progressive obsolescence was constantly at work to lessen the value of all depreciable prop-

erty beyond the one element of observed physical depreciation due to wear and tear or use and exposure as denominated by Mr. Sloan. We, therefore, feel that we must adhere to the former judgment of the Commission. The percent condition of each class of property is set out in detail in Appendix 'A.'

For an extended discussion of a similar subject see, In re Chesapeake and Potomac Telephone Company *v.* Public Service Commission of Maryland, November 28, 1933.

RE-EXAMINATION OF VALUATION OF CERTAIN ITEMS.

There are certain items which call for re-examination in view of a more detailed study of the principles laid down in Smith *v.* Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255; Illinois Bell Telephone Company *v.* Gilbert *et al.*, 3 Fed. Suppl. 595, and Los Angeles Gas & Electric Corp. *v.* Railroad Commission, 289 U. S. 287, 77 Law Ed., 1180.

Toll Service;—Interstate and Intrastate.

> "A recent decision of the Supreme Court (The Illinois Bell Telephone case) may require some modification of this figure and make it necessary to further classify this toll property into property used and useful in intrastate service as distinguished from interstate service."

The Supreme Court in the Chicago case stated:

> "The proper regulation of rates can be had only by maintaining the limits of state and federal jurisdiction, and this cannot be accomplished unless there are findings of fact underlying the conclusions reached with respect to the exercise of each authority."

This matter is discussed at large by counsel for the Company, Brief 302 to 314, inclusive, and by counsel for the State, Brief, page 70.

A State Commission in fixing intrastate telephone rates of a company which also furnishes interstate service must

separate the intrastate and the interstate property, revenues and expenses and make specific findings as to the value of the property devoted to intrastate service. Chief Justice Hughes gives a very clear analysis of those principles which compel the separation of the property devoted to the two classes of toll service and states:

> "While the difficulty in making an exact apportionment of the property is apparent, and extreme nicety is not required, only reasonable measures being essential, it is quite another matter to ignore altogether the actual uses to which the property is put."

The Commission in its order of October 14, 1924, by which the company-wide case was initiated, ordered the Company to file its inventory.

> "of all its property located in the State of Ohio used and useful and to be used and useful in furnishing telephone service therein *both toll and exchange.*"

The Commission did not at that time appreciate the importance of distinguishing between the property used for interstate toll service and that used exclusively for intrastate service. However, there is sufficient evidence, as disclosed by the record made prior to our former decision, supplemented by the additional evidence submitted by the Company since, to enable us to make a reasonable separation between the property devoted exclusively to interstate service and that devoted to intrastate service, both toll and exchange.

Following the decision of the Supreme Court in the Chicago case, we have made a study of the property devoted to, and the income arising from, interstate service as distinguished from intrastate service.

Over a considerable period, a large force was employed by the company in typical exchanges to time the toll and exchange lines as the same were used for interstate and intrastate service and to make an extended analysis of toll tickets. We have no reason to doubt the accuracy of this division between interstate and intrastate property

and income, and we adopt the company's conclusion, as shown by its Exhibits. These allocations, expressed in terms of percentages, are shown on Appendix "L."

Intrastate Toll and Exchange Property and Revenues.

No evidence has been adduced by which we can allocate the intrastate property of the Company as between exchange service and toll service.

The Supreme Court pointed out that the Company in separating its interstate and intrastate business attributed the property used at the subscriber's station and from that station to the toll switchboard or to the toll trunk lines entirely to intrastate service, and held that this was erroneous for the reason that the subscriber's station and other facilities of the Company used in connecting with the long distance toll board are employed in the interstate transmission and reception of messages.

By a parity of reasoning, it is apparent that the subscriber's station and other facilities of the Company which are used in connecting with long distance toll board for an intrastate message are employed in toll service as distinguished from exchange service, even though such toll service is complete within the limits of the State.

To segregate intrastate toll property and revenue from exchange property and revenue would be almost impossible. Fortunately the Company, the State and the several solicitors are in agreement that there need be no such separation.

Western Electric Prices.

The Supreme Court in the Chicago case held that:

> "Findings should be made as to the net earnings of a supply company from the manufacture and sale of equipment to an affiliated operating telephone company, in order to determine the fairness of the prices paid for equipment in a case involving the adequacy of telephone rates."

The Commission found in its tentative valuation that the Western Electric Company had not overcharged the Ohio

Bell Telephone Company for equipment sold by it to that company. In view of the Supreme Court's holding in the Chicago case, we feel that we may not finally determine this point without further examination of the evidence adduced since the announcement of our tentative valuation.

New Evidence.

During the year 1932 the Chicago case was being heard before the Statutory Court under the mandate of the Supreme Court. Accountants engaged in the Chicago case furnished evidence in the present case on matters concerning which testimony had been given and the Illinois Commission made available the services of its engineers. Counsel in this case entered into a stipulation covering the testimony of the Chicago case in so far as it related to four issues, namely: Western Electric profits; A. T. & T. License contract service cost; separation of interstate and intrastate plant, revenues and expenses and the rate of return.

Finding of the Statutory Court on Western Electric Prices.

The Statutory Court in compliance with the direction of the Supreme Court made definite findings of fact touching the relations between the Bell Company and the Western Electric Company, as appears specifically in Findings 14 to 20, inclusive. The Court found that the prices of goods sold by the Western Electric to the Bell Company were fair and reasonable and no higher than those charged other purchasers and that the earnings of the Western Electric were not excessive.

In Finding 19 the percent of earnings and profits of the Western Electric Company on sales to its Bell customers for the years 1916 to 1930 inclusive are set out. Finding 20 is to the effect that the sales of the Western Electric have been representative of the sales of that company to all Bell customers and that the earnings made by the Western Electric in the Chicago area have been fair and reasonable except that for the period after November 1, 1930,

there should be a reduction of 10% from prices charged by the Western Electric.

The State has presented its views of the Western Electric operations in great detail in counsel's brief pages 11 to 40 inclusive. It is urged by the State that 7% would constitute a fair return upon the value of the property of the Western Electric used for Bell service and that any profit above that amount is excessive and should be eliminated from the valuation of the Bell Company.

The summary of the State's claim is set out graphically in Appendix "B" of the State's brief pertaining to the valuation of June 30, 1925, the date certain, and Appendix "E" pertaining to subsequent valuation. These percentages are converted into dollars in Appendix "B", and show the State's claim that the reproduction value of the property by the Commission as of June 30, 1925, was excessive in the sum of $2,029,441.00 and that for the last six months of 1925 Western Electric profits were excessive in the sum of $188,000; and for 1926, $303,000; 1927, $535,000; 1928, $425,000; 1929, $341,000. For the year 1930 there was a loss to the Company of $47,538 (Appendix "E", Line 16).

Day Certain.

We are required to fix the value of the property as of "a day certain" to-wit: June 30, 1925. The Statutory Court estimated the return to the Western Electric from its Bell business for each of the years from 1916 to 1932. During that period the highest estimate of return was for the year 1921 computed by the Court at 10.7%.

All the estimates of return by the Court in the Chicago case and by the State in this case are based upon book value without an actual appraisement of the property of the Western Electric. The engineers who valued the property of the Bell Company in the instant case used values of items furnished by the Western Electric based upon its price lists. For all the years prior to 1925, as found by the Court, the earnings of the Western Electric were less than 7%, except for the single year 1921. For the five years from 1925 to 1930 inclusive, the Court finds that the profits were in excess of 10%, being as high as 15.8% in 1928. In

1930 and 1931 they are found to be slightly over 7%, while 1932 shows a loss of 3.3%.

The figures set out in the State's Brief, Page 30, do not predate the year 1924 for which year the percent of return is asserted to be 10.3% with a substantial increase for the years thereafter until 1930, reaching the high point of 20.3% in 1928.

We have only one year of the State's estimate of the earnings prior to 1925 and we do not feel that that is a safe basis for discarding the finding made by the Court that there was no excess profit enjoyed by the Western Electric. It is proper that we call attention to the fact that the percents indicated by the State, as disclosed by the table in the brief, were computed "after correcting for all the foregoing adjustments." While we may concede that the State is right in some of the adjustments asserted, we are not in harmony with many of them.

Proper Profit of the Western Electric.

In considering a proper profit for the Western Electric beyond which there would be an undue drain upon the resources of the Bell Company, it must not be lost sight of that while the Western Electric is the manufacturing department of the Bell Company, yet it is not, in fact, a public utility whose profits can be made secure by an order of the Commission. It is a manufacturing company whose income may dwindle in lean years below that which could be considered fair for a controlled utility and it may even encounter losses.

The Western Electric, while closely associated with the Bell Company and having a fairly constant market in supplying the requirements of that company, yet occupies the position of a hazardous undertaking, and its profits may fall without the supporting order of a regulatory body. If its profits may so fall, they likewise should be permitted to rise within proper limits without the regulating restraint of the Commission.

It might be said that there is no attempt to control the prices charged by the Western Electric to the Bell Company, but that the Bell Company should be penalized for

paying these prices, inasmuch as the profits of both companies flow into the same treasury through the common holding company. In a measure this is correct, but there has been no showing that the prices charged by the Western Electric were "exorbitant."

The Supreme Court in the Chicago case in syllabus 7 and in its discussion of that head note, does not find nor intimate that the Western Electric should be confined to a profit only equal to that allowed to the utility. Chief Justice Hughes in speaking of the fairness of the prices uses the phrase that "the City had failed to support its contention that these prices were exorbitant."

In the later case of Western Distributing Company *v.* Public Service Commission of Kansas, 285 U. S. 199, 76 L. Ed. 655, the Court goes no further than to hold that where the total capital of several companies is embarked in one enterprise, the reasonableness of the inter-company charges may be the subject of inquiry and scrutiny, and that the state authority is entitled to a showing of the fairness and reasonableness of the price for gas paid by the distributing company to its associate producing company.

The rate fixing body has the right and duty to closely scrutinize inter-company charges, to see that no unjust burden is placed upon the utility whose rate is under investigation, but this does not mean that the profit of the non-utility company is to be limited by the same rules that govern the rates to be charged by the associate utility. The Supreme Court has suggested a broader rule in Wabash Valley Electric Co. *v.* Young, 287 U. S., 488, at 497.

The finding of the Statutory Court in the Chicago case on this important matter will be reviewed by the U. S. Supreme Court at an early period, the case having been set for hearing before the Supreme Court for January 15, 1934. Should the Statutory Court be reversed by the Supreme Court, it will be a comparatively simple matter to readjust the estimate as it affects the Ohio case.

After considering the additional evidence offered and in harmony with the decision of the Statutory Court, we are not disposed to disturb our former finding as to costs of purchases from the Western Electric in determining the

reproduction cost of property of the Ohio Bell Company as of June 30, 1925, nor are we disposed to further question the costs of the purchases from the Western Electric subsequent to that date except as to the price increase of 10.2% effective November 1, 1930, which increase is disallowed as to all purchases subsequent to said date.

The amounts in dollars claimed by the State as excessive for the years subsequent to 1925 are not impressive, when considered in connection with the volume of goods sold by the Western to the Bell Company during those years. Our former finding on this matter is affirmed.

GOING CONCERN VALUE:

The Commission in its opinion fixing the tentative value had occasion to discuss at length going concern value and allowed the sum of $3,592,040 or 3¾% of the value of the physical property as the proper amount.

Counsel for the Company points out that the Commission failed to include as part of the going concern value 3¾% of the undistributed construction expenditures of $16,523,387.00 amounting to $619,627.00 and in Statement No. 3 filed with the Commission on June 14, 1933, has readjusted the value by the addition of this amount.

The State on page 10 of its Brief in support of its claim that "Going Concern" value should be disallowed, merely asks that the Commission again refer to its former brief filed April 30, 1930.

Going concern value has been discussed by the Commission in many cases, see:

Ohio Bell Telephone Co., P. U. C. O. Rep., 1931, P. 61 at P. 71.

Cambridge Home Telephone Company, P. U. C. O. Rep., 1930, Page 117, PP. 131-134.

Appeal of Columbus Gas & Fuel C---any, P. U. C. O. Rep., 1930, p. 117, pp. 131-134.

It discussed the matter at length at the time of fixing the allowance in the instant case and the testimony need not be further commented upon.

In commenting on the undistributed overheads allowed in the former finding, the Commission said:

> "The Commission may not, of its own motion, include in the items covered by these percentages, the item of going value, when the witnesses with the possible exception of Mr. Allensworth have each severally stated that it was not considered in their estimate of percent."

The Commission adopted 3¾% in substantial harmony with the amount allowed by the Illinois Commission and endorsed by the Statutory Court and not further discussed by the Supreme Court in the Chicago case.

Since our allowance of the going concern value in this case we again discussed the question in the Columbus Gas case, *supra*. In that case we allowed 14% to cover the undistributed construction cost and said in reference to going concern value:

> "We are not impressed with the fact that a going concern value amounting in the aggregate to millions of dollars can be built up on the theory that expenses are to be incurred after the property has been reproduced which were not, as a matter of fact, incurred in the original construction of the property."

Since our former decision we have had the recent illuminating case of The Los Angeles Gas & Electric Corporation *v.* Railroad Commission of California, 289 U. S., 287, 77 L. Ed., 1180. In that case Chief Justice Hughes discusses at length under Division 8 the disallowance by the California Commission of an item in excess of $9,000,000 for "growing value." The Chief Justice has marshalled in his opinion all the Supreme Court cases touching this point.

The Chief Justice says:

> "The concept of going value is not to be used to escape the just exercise of the regulatory power in fixing rates, and, on the other hand, that authority is not entitled to treat a living organism as nothing more than bare bones."

> "It does not give license to mere speculation; it calls for the consideration of the history and circumstances of the particular enterprise and attempts at precise definition have been avoided."

The Chief Justice details the finding of the California Commission and concludes that the base rate of $55,500,000 was sufficient to cover the value of the property including any element of "going concern value" that might exist. It was pointed out that certain items improperly included in the rate base might be deducted and that there would still remain a sufficient amount to cover any item of going concern. The Court says:

> "The record affords no basis for criticising the allowance made by the Commission for materials and supplies and working capital, and thus the entire excess may be regarded as applicable to whatever intangible value the property had as a going concern."
>
> "The fact that this margin in the rate base was not described as going value is unimportant if the rate base was in fact large enough to embrace that element."

In commenting upon the testimony of the witnesses as to going value, the Court says:

> "It is unnecessary to analyze the testimony of these witnesses, as it is obviously too conjectural to justify us in treating the failure to include their estimates as a sufficient basis for a finding of confiscation."

We think this comment of the Court might well be applied in the instant case to the witnesses of the Company concerning this item, which is by them treated as "cost of establishing business" rather than as "going concern value" and includes as a basis for the calculation many items to which the Supreme Court's designation "too conjectural" is pertinent.

In view of these decisions, we conclude that the Commission is not bound by the method in which the engineers presented their evidence as to the value of the property, nor by the fact that they each, save Mr. Allensworth, may have dis-

claimed intention to include within their estimate the going concern value, but that we are free to determine whether or not the final value found by us, is, as a matter of fact, sufficient to include going concern value. In other words, the Commission is free to examine the testimony as to basic value to determine whether there has been sufficient valuation to cover those items that might contribute to going concern value.

As to the right of the Commission to use its own judgment, see Portsmouth Gas Co. *v.* P. U. C. O., 119 O. S., 24, at P. 57.

Going concern value must be proved as any other item of valuation. While it has been repeatedly held that it is a proper element to be considered, no specific rule has been laid down as to what the value should be, but the particular conditions in each case must govern. No fixed rule can be based upon a per customer expenditure or a percentage of the property involved.

Mr. Schneider in his Exhibit No. 3 includes an item for "Cost of establishing business" and the Company's witnesses confined their testimony to "cost of establishing business" rather than to "going concern value."

Mr. Hagenah testified as to "going concern value" and estimated it at 10% of property value. Mr. Allensworth made no separate allowance for the reason that the Company did not show that it had ever incurred any cost of establishing the business that has not been absorbed currently as operating expense.

Our Supreme Court in the case of Cincinnati *v.* P. U. C. O., 95 O. S., 554, disapproved the item of cost of attaching business and in the case of City of Cleveland *v.* Public Utilities Commission of Ohio, 98 O. S., 462, it again expressed its disapproval of the allowance of any sum as a part of permanent capitalization for cost of attaching business, yet we prefer to consider that the evidence of the company, while specifically directed to the condemned item of attaching business, is relevant to the broader consideration of "going concern value" or "going value."

On the subject of going concern value we have several expressions of our Supreme Court and invariably it has held

that where a sufficient allowance is made for overheads comprising engineering, administrative and legal expenses, liability insurance, taxes and interest during construction and for omissions and contingencies, the requirements of going concern value have been met. Lighting Company *v.* P. U. C. O., 118 O. S., 592; Logan Gas Company *v.* P. U. C. O., 121 O. S., 507; Cincinnati *v.* P. U. C. O., 113 O. S., 259.

The latest pronouncement of the Supreme Court of Ohio on this matter is found in the case of Columbus Gas & Fuel Company v. P. U. C. O., decided June 21, 1933, 127 O. S., 102. The Court says:

> "The members of the Commission were unanimous in the disallowance of going concern value as a separate item. In a number of cases this Court has affirmed such action by the Commission. City of Cincinnati *v.* Public Utilities Commission, 113 O. S., 259; Hardin-Wyandotte Lighting Company *v.* Public Utilities Commission, 118 O. S., 592; Logan Gas Company *v.* Public Utilities Commission, 121 O. S., 507.
>
> Similarly the Supreme Court of the United States in a recent case, Los Angeles Gas & Electric Company *v.* Railroad Commission of California, *supra*, refused a going concern value claim of approximately $9,000,000.00. This Court is of opinion that in the instant case this refusal was proper."

Considering that our valuation is of a plant in actual and successful operation, and that we have made (*post*) what we regard as ample allowance for direct and undistributed overhead construction costs and that no specific costs have been established that are not covered by such allowance, and considering also that many items testified to are "too obviously conjectural" and giving weight to the definite declarations of both the Supreme Court of the United States and of the State of Ohio, we have concluded that the testimony offered does not justify a separate allowance of going concern value, either as such or as "cost of establishing business." We therefore now hold that the amount, tentatively allowed by the Commission, of $3,592,040.00 as going concern value should be eliminated as a separate item.

Overheads—Direct and Indirect.

To correctly determine the value of these several overheads, we must make a careful analysis of the testimony upon which they are based.

Distributed or Direct Overhead.

In the theoretical reconstruction of a property the engineers add to labor and material costs certain percents for plant supervision, tool expense and incidental expense applied to the direct labor cost, and for supply expense, a percent of the material cost. There are many details of these main divisions including sundry items which cannot be mentioned at length.

Unfortunately the several engineers do not so treat these overheads that the testimony of each may be accurately compared to the testimony of others, but we are able to give a fair analysis in spite of this lack of uniformity in treatment and terminology.

Plant Supervision and Tool Expenses. (Accts. Nos. 221 and 232 to 256 Incl.).

The most important overhead included in unit costs is that of plant supervision, which Mr. Williams estimates at 18.5%, Mr. Hagenah at 17% and Mr. Allensworth at 10%.

Mr. Williams in considering plant supervision at 18.5%, added 4% for the item of tool expense which was separately estimated by the other engineers.

Mr. Hagenah estimates 17% for supervision excluding tool expense and as to that item he fixes an average of 2% based upon an analysis made by Engineer Dorsey who had estimated it at from 1.31% to 5% averaging slightly in excess of 2%.

Mr. Allensworth estimates 10% for supervision and 2% for tool expense.

Comparing the estimates of the three engineers for the two items of plant supervision and tool expense, we find 22.5% for Williams, 19% for Hagenah and 12% for Allensworth, all such percentages being confined to labor costs.

Visualizing a theoretical reconstruction of all the different plants, we are of the opinion that the costs could be kept within the limits allowed by Mr. Hagenah as it must be apparent that if the Company were engaged in a wholesale reconstruction of all its exchanges in its Ohio territory, it could well develop more pronounced economies than were disclosed in the actual construction upon which Mr. Williams bases his estimate. This allowance is estimated at $3,016,041 for plant supervision and $338,939 for tool expense, a total of $3,354,980.

We do not lose sight of the claim of the Company that the actual construction on which Mr. Williams based his judgment was of such importance as to be wholesale rather than piece-meal.

Incidental Expenses: (Accts. 251 to 253 Incl.).

This item is associated with plant supervision and is by Mr. Williams and Mr. Allensworth based upon direct exchange and toll labor and by Mr. Hagenah on direct toll labor only.

This incidental expense is not very satisfactorily explained or sustained by the witnesses. Mr. Dorsey, an engineer for Mr. Hagenah, allowed 20% of the labor costs for this item and stated, R. 2161, that it covered the cost of boarding the men and taking care of them on the toll line construction work, but that he allowed nothing for board and lodging in the construction of the exchange plant.

The development of this item by Mr. Dorsey appears on the Dorsey Exhibit Nos. 2 and 4. When this is translated into dollars in Account 251, Toll Pole Lines, Account 252, Toll Aerial Cable and Account 253, Toll Aerial Wire, it is estimated at $655,360—$388,888 being attributed to toll pole lines, all of which we allow. An allowance for board and lodging should not be made for the construction of exchange lines, on a reproduction basis.

Transportation of laborers and material is covered by the several engineers under different items so that it is impossible to make a comparison of the amount estimated by each for this expense, but we are convinced it is amply covered by an allowance for incidental expense.

Supply Expense: (Accts. 221 and 231 to 256 Incl.).

The item of supply expense is based upon material and is next in importance to plant supervision based upon labor and we have allowed the estimates of the engineers Williams and Hagenah for this item, and estimate it at $2,188,885. For details see Rec. 556-2153-2160-3287-3288, the allowance being 6% of material value in Accounts 231 to 233; 241 to 245 and 251 to 255 and 4% in Accounts 221, 234, 235, 246 and 256.

Contingencies: (Accts. 221, 222, 234 and 235).

This item is computed by Engineer Williams at 1% of the material cost in Accounts 221, 222 and 234 and at 10% of the labor cost in Account 235. It covers sundry items explained, Record, page 535. Hagenah agrees with Williams as to the valuation of the property to which this overhead was added and it is estimated at $145,553, and allowed.

Building Overheads: (Acct. 212)..

In the estimate of the theoretical cost of reconstructing buildings the overhead percents are not added separately to the labor or material cost, but are imposed upon the total of such costs for the completed structure and include such items as contractors' overheads and profits, insurance, architects' fees and supervision, amounting in the aggregate to approximately 16.7% of the labor and material cost of the building. The total of such overheads included by the engineers in the value of buildings is estimated at $1,280,861, and is allowed.

Western Electric Engineering, Service and Inspection: (Accts. 221, 222, 233, 234, 243 and 253).

There is added to the cost price paid to the Western Electric Company for goods furnished by it to the Bell Company, a 7½% overhead for engineering fees on central office telephone equipment amounting to approximately $931,260 and more than 4% for service and inspection of wire furnished by the Western Electric, amounting to approximately $169,118, both of which items we have allowed

as included by the engineers in their valuations of the property.

Direct Overheads Translated into Dollars.

The entire physical property as disclosed by the appropriate I. C. C. account numbers show as a result of our allowances the following estimated sums added to the unit costs, entering into the reproduction of the physical property:

Plant Supervision	$3,016,041
Tool Expense	338,939
Board and lodging applied exclusively to toll line construction	655,360
Supply Expense	2,188,885
Contingencies	145,553
Miscellaneous applied exclusively to building construction	1,280,861
Western Electric Engineering	931,260
Western Electric Service and inspection applying to wire	169,118
Total	$8,726,017

This total added reconstruction value for distributed or direct overheads of $8,726,017 reduced to the present value, amounts to approximately $7,496,264. All these sums we have allowed at their appropriate places.

There are certain other overheads included in unit costs which could not be sufficiently identified to permit separation. These omitted items consist of such overheads as stable and garage expense included in labor units and freight, cartage, loss and breakage covered in material units, which in our judgment have been properly allowed.

Undistributed Construction Expenditures.

After the above direct overheads have been added to the physical value of the property there is still the further group of percents of overhead expenses identified as such, representing undistributed construction expenditures.

The Commission in its former opinion on page 70 stated:

> "There is not the variance among the witnesses for the company and the State in regard to undistributed construction costs that we find in many other items in this case. The various witnesses have estimated this item as follows:

Williams and Schneider	17.11%
Sloan	16.67%
Hagenah	17.25%
Allensworth	14.54%

Considering the substantial additions that result from these percents, the Commission has made a further searching examination of the record that it may be advised as to the justness of these overheads and whether or not any of them are excessive and subject to elimination or revision.

Guided by the evidence that we can gather from the record and applying our own judgment as to the weight of such evidence, we find 15% ample to cover undistributed construction expenditures, and we have broken this general item into the several elements—Omission 1%; Interest During Construction 6%; Engineering 5%; Taxes During Construction 1%; General Expenses 2%—Total 15%. The evidence upon which we base our conclusions as to the component parts of the total allowance is pointed out below.

Having allowed 15% for undistributed construction expenditures, it does not follow that this shall be applied to all the physical property, plus the allowance for direct overheads. This is so for the reason that this 15% is based upon various items, some of which are applicable to all the property and some applicable to only a portion thereof. It is true that some of the engineers in testifying as to these undistributed construction expenditures have stated that in order to correctly estimate their value, the percent should be applied to the entire property and not limited to the percent of that property to which such particular overhead applies. To this view we do not subscribe.

It will be impossible within the proper length of this opinion to analyze the testimony of the several witnesses on undistributed overheads and we must confine ourselves

to naming the pages and exhibits on which we based our final conclusion.

Omissions—1%.

Williams, (Record 133, pages 140 to 146 of Williams' Exhibit 3-B, and pages 110 to 116 of Williams' Exhibit 7-C;) Schneider, (Record 199-201 and 656-674); Hagenah, (Record 2322 and 2323) and Allensworth (pages 3367-3371) testify in detail to this item, giving their several conclusions.

It has been well said that the engineers assume that all inaccuracies in inventories work to the detriment of the Company, whereas by the law of averages it is just as probable that they work to the benefit of the Company. We allow 1% for this item of omission. We feel, however, that the 1% for omissions should not apply to those items where an omission could not possibly occur or would be a risk properly assumed by the contractor and we do not believe that it should in this case be applied to rights of way, land, buildings or general equipment. We cannot conceive that there would be any chance of omissions in any of this class of property.

Interest During Construction—6%.

This item is testified to by the various witnesses (Record pages 697-709-767-2324-2327-3170-3368) and is computed at 6% except by the witness Hagenah who computes it at 6½%, all basing their estimates upon the theory that the theoretical reproduction project would involve a five year period, but that a service performing unit will be completed within a period of two years, for one-half of which time interest is computed upon the full value of the completed unit. We agree to the allowance of 6% and the average period of one year and that it should be applied to the full value of the completed property.

Engineering—5%.

The item of engineering is discussed by the various witnesses testifying on pages 677-678-685-759-2329-3170-3829. Williams, Schneider and Allensworth agreed on 5% for this item, while Mr. Hagenah estimates it to be 6%. We have

accepted 5% as the correct amount. We are, however, of the opinion that this 5% should not be applied to Right of Way—Account No. 207; Land—Account No. 211; Buildings —Account No. 212; Switchboards installed by the Western Electric Company included in Central Office Telephone Equipment—Account No. 221; Other Equipment of Central Offices—Account No. 222; Private Branch Exchanges—Account No. 234; Material value of wire in Interior Block Wires—Account No. 233; Exchange Aerial Wire—Account No. 243; Toll Aerial Wire—Account No. 253; nor to General Equipment—Accounts No. 261-265, inclusive.

The valuation of buildings was made by company witness Meyers under Account No. 212. The witness proceeded upon the assumption that the buildings were to be reconstructed by contractors and not by the Company, and he has added to the estimated contractor's cost overhead and profit for the contractor of 8%, an architect's fee of 6%, and architect supervision of 1½%, together with such items as 7% of the payroll for insurance and 1½% of the bid price for bond. In our judgment, the present value of buildings as arrived at by the method pursued by Mr. Meyers should not be further enhanced by allowing as an addition thereto an engineering fee. We disallow this engineering fee of 5% for buildings.

Central Office Telephone Equipment, Other Equipment of Central Offices and Private Branch Exchanges have an allowance of 7½% for engineering added to the material cost of switchboards installed by the Western Electric Company (Record 536-538). Interior Block Wire, Exchange Aerial Wire and Toll Aerial Wire have in their unit costs an addition of 4.7% of material value for Western Electric Company service and inspection.

We are not impressed with the claim that after the Western Electric has been allowed, in addition to the cost price quoted to its associated companies 7½% for engineering, that there should be a further sum of 5% as undistributed overhead for engineering, and we disallow the same.

General Equipment is not of such a nature as, in our judgment, to require an engineering service in addition to the overheads already allowed.

We are conscious of the fact that there are certain engineering services that would be required of and rendered by the Company's engineers in making preliminary surveys and estimates, as well as during installation, but we are of the opinion a general charge of 5% of the entire value of the physical property is not justified. The fair cost of this service is amply covered by the engineering and supervisory fees that we have allowed, both as direct and indirect overheads. Engineers' fees as such have been allowed in the amount of $2,779,056.

Taxes During Construction—1%.

This item was testified to by the various witnesses on pages 261-693-695-763-2326-Mr. Hagenah includes the same in general expenses. We conclude that 1% is sufficient to cover this item and that it should be applied to all the property.

General Expenses—2%.

We allow general expenses in the sum of 2%. This item was testified to by the several witnesses on pages 689-760-2325-3153-3267-3284. We allow this percent and apply it to all property.

Undistributed Expenses in Dollars.

The aggregate of the undistributed construction expenditures as developed by the several percents aggregating 15% and applied to present value restricted as indicated in Appendix "D", and translated into dollars is as follows:

Omissions 1%	$697,120
Interest during construction 6%	4,953,996
Engineering 5%	2,779,056
Taxes during construction 1%	825,666
General Expenses 2%	1,651,332
Total as of the day certain	$10,907,170

It must not be lost sight of that the percents we allow for undistributed construction expenditures attach to the direct overheads included in the unit cost of physical prop-

erty already allowed in the sum of $7,496,264 which reduced to dollars amount to approximately $1,000,000 from superimposing one class of overheads on another.

Total Overheads.

Distributed and undistributed overheads for which we have allowed an estimated total of $18,403,434 are 19.6% of the entire valuation of the fixed capital including all overheads, and 24.5% of the total value of the fixed capital exclusive of overheads.

We have discussed overheads somewhat at length and have translated them into dollars in order that it may be apparent that there have been very substantial allowances made for items closely related to those associated with going concern value. They are, of course, not identical, but if we were to allow going concern value as claimed by the company there would be many items which would overlap. See Going Concern Value, *supra*, page 18.

Right of Way.

The Commission in its findings made January 10, 1931, determined that an allowance of 3% of the value of the outside plant for right of way was reasonable; taking said percent as the measure of the value of right of way the Commission at that time fixed said value at $1,568,281. Protests to the amount of said valuation were filed by the Attorney General and various representatives of the municipalities and communities herein affected as well as by the Telephone Company, one side contending the amount allowed is too high and the other too low. As a result of these protests we have again gone into the evidence from which we find that the witnesses testifying upon the subject have relied upon different lines of reasoning for their final conclusion as to right of way value, some using a percent of the cost of the outside property and others using a cost per pole basis.

Section 499-9 of the General Code does not require the Commission to evaluate the right of way at its reproduction cost new, but rather contemplates that the Commission determine the fair value thereof. We fail to find in

the record any list or record of right of way owned by the Company, nor is there any evidence as to the market value as of the date certain. We conclude too, that as there is no market for right of way such as owned by the Telephone Company in this case, no valuation can be based upon market price.

It may also be noted that Mr. Williams, a witness for the company, testified that if the Company were reproducing the property, it would, in his judgment, be necessary to obtain right of way rights from either the cities or the property owners or somebody else. There is no evidence to the effect that the company would, in the event of reproduction, be required to pay any political sub-division for right of way.

The Uniform System of Accounts for Telephone Companies, in effect since 1913, requires right of way be included in the capital accounts and property values of a telephone company as follows:

> "This account should include the cost of all lands and interest in land acquired for the location of telephone wires, cables, pole lines and conduits; salaries and expenses of right of way agents; expenses of appraisers and of juries, commissioners, or arbitrators in condemnation cases; real estate brokers' commissions; cost of plats, abstracts, notarial fees, examination of titles, recording deeds, etc."

The company was therefore required to carry on its books the aforesaid accounts for right of way. The methods of fixing value of property rights, which should be a matter of record, as adopted by the witness for the company, do not appear to us satisfactory, and we conclude that in the present case the actual experience of the company as shown by its books is the safest guide to follow in fixing fair value of its right of way. The books of the Company show the right of way value as of June 30, 1925, to be $1,243,034. (Wood Exhibit 15, Line 25.) Our Supreme Court in the recent case of The Columbus Gas & Fuel Company *v.* Public Utilities Commission, 127 O. S. 109, stated that in valuing leaseholds used and useful, the

Commission may consider book value. We consider that such rule is applicable to right of way in the present case. We therefore hold that the best evidence of value in the record in this case is the book value and therefore conclude that $1,243,034 is the proper amount to be allowed as the fair value of right of way, and the former allowance is set aside and held for naught.

Working Capital Including Material and Supplies.

The Commission in its tentative valuation allowed for working capital including materials and supplies $3,500,000. Protests were filed by both parties to said allowance. The various witnesses who testified on this subject had separate or special formulas in arriving at a sum to be allowed for this item. Mr. Williams' figure of $6,350,000 is based on 5% of the reproduction cost new of the physical plant, less general equipment; Witness Sloan based his figure on consideration of eight weeks operating expense as one factor and 15% of gross revenue as another factor, rounded off at approximately $7.00 per telephone. Witness Hagenah based his allowance on five different methods, taking the average thereof as his final judgment for the amount to be allowed, and witness Allensworth based his on materials and supplies on hand on the day certain plus one month's operating expenses covering two payroll periods.

The matter of resorting to an arbitrary percent for such an allowance does not appear to us to be a satisfactory rule to be applied in this case and it would seem that the financial requirements of this particular company for working capital should be determined in a more scientific manner giving due consideration to its balance sheets, operating statements, credit requirements, billing practices, purchasing contracts, etc. It we cannot adopt the percent rule as urged by the Witnesses Sloan and Williams, we likewise cannot adopt Mr. Hagenah's figure for it is based upon an average of five methods which include a number which we must reject.

Company witness Cox testified that purchases from the Western Electric Company are billed at the end of the

current month and are payable thirty days thereafter. This indicates an average forty-five day line of credit on the bulk of purchases. Exchange revenues are billed subscribers in advance and toll revenues are billed in arrears. Exchange revenues (Account 500) average about four times the toll revenues (Account 510) indicating an advantage to the company. Sizeable amounts are carried on the company's books representing subscribers' deposits, and service billed in advance indicating that a part of the working capital, at least, is furnished by subscribers. It therefore appears that it is hardly necessary to speculate as to what is a proper allowance for this item when we have before us the actual experiences of the company.

It is our conclusion that the most satisfactory manner of arriving at the amount to be allowed for working capital is to take the average operating expenses for one month plus the value of material and supplies on hand June 30, 1925. This conforms to the basis testified to by Mr. Allensworth and to basis number four submitted by Mr. Hagenah.

In determining operating expenses we exclude reserves for depreciation but allow expenditures for rent and for taxes assignable to operations. Using this method we find the average operating monthly expenditure for the year 1925 to be as follows:

Current Maintenance Expenses	$395,363
Traffic Expenses	626,387
Commercial Expenses	191,611
General and Miscellaneous Expenses	81,344
Taxes assignable to Operations	215,914
Rent	47,547
Total (Excl. Deprec.)	$1,558,166

The value of materials and supplies as of June 20, 1925, is $1,390,336.32, a total of $2,948,502 which the Commission allows for working capital and materials and supplies as part of the rate base and the amount of $3,500,000 heretofore determined upon is set aside and held for naught.

The same method will be applied in fixing amount for working capital and materials and supplies for subsequent

years excepting that the amount of materials and supplies will be determined by taking the average of the amount on hand at the beginning of the year and end of year. The amounts to be allowed for the subsequent years are as follows: 1926, $2,923,563; 1927, $3,052,701; 1928, $3,218,291; 1929, $3,451,024; 1930, $3,250,138; 1931, $2,804,990; 1932, $2,497,696; 1933, $3,044,894. See Appendix "E" for details.

LAW GOVERNING CASE.

While this case has assumed the status of a company-wide case by virtue of the order of the Commission of October 14, 1924, it had its inception in part in the filing of new schedules by the company providing for increased rates and in part by the Commission's independent investigation.

The combined cases were tried in compliance with the statutes as they existed prior to the passage of the Carpenter Act, amending the Pence Law (113 O. L., p. 16).

Under the provisions of Sections 499-9, *et seq.*, and 614-20, *et seq.*, all values have been fixed as of a day certain, to-wit June 30, 1925.

Under the sanction of Section 499-11 and authoritive decisions much evidence has been introduced on behalf of the utility and of the State as to extensions, improvement and other changes in the condition and value of the property for each successive year subsequent to June 30, 1925.

When a rate goes into effect by virtue of the provision of the statute, upon the filing of the bond, such rate cannot be altered until the Commission has found and fixed a different rate, thus precluding any alteration of the rate as the value of the property may change, due to additions and betterments. Logan Gas Company *v.* Public Utilities Commission of Ohio, 115 O. S. 107. City of Cleveland *v.* Public Utilities Commission of Ohio, 126 O. S. 91.

The just and reasonable rate to be fixed by the Commission, as of a date certain in lieu of the schedule rate, may, however, be properly influenced not only by the condition that exists as of the day certain, but in consideration of predictable or experienced changes in order that the rate for a reasonable time may produce for the company a proper return upon its property used and useful.

This we must consider in compliance with the decisions of the Supreme Court of the United States to the effect that an honest and intelligent forecast of probable values made upon a review of all relevant circumstances is essential, and in every case the future as well as the present must be regarded to determine whether the rate is yielding or will yield a reasonable return upon the property at the time of investigation and for a reasonable time in the immediate future. See Bluefield Water Works *v.* P. S. C. of W. Va., 262 U. S. 679; McCardle *v.* Indianapolis Water Company, 272 U. S. 400.

In the Chicago case, the Supreme Court said:

> "It is the duty of the Federal Court, in determining whether utility rates fixed by a state commission are confiscatory, to find the facts as to the property value, revenue and expenses of a utility during the interval between the issuance of the order and the date of the court trial, since an order confiscatory when made may subsequently become valid, and vice versa."

The recent case of Central Kentucky Natural Gas Company, Appellant, *v.* Railroad Commission of Kentucky, decided by the Supreme Court on December 1, 1933, furnishes further authority for the consideration of changes occurring subsequent to the date certain.

In view of these statutes and decisions, we are required to ascertain the value of the property as of the date certain and base the rate upon such value and upon the income and expenses of the company at that time, with the modification that we ascertain the value of the property in succeeding years with due consideration to price trends and consider revenues and expenses of those years in order that the rate fixed shall produce an income fair to both the rate payer and the company for a reasonable time in the immediate future, from the date certain.

It is probably true that this is more imperative in considering the question of confiscation in the Federal Court, than in the fixing of a rate by the commission, yet as the rate fixed by the Commission will finally be tested on the question of confiscation, that infirmity in a rate may be

avoided by following the rules by which the question of confiscation is tested.

PRICE TRENDS.

When we examine the condition of the company's property, both as to value and income, subsequent to June 30, 1925, we must take into consideration not only the net additions, but also changed conditions and price trends, that we may determine whether the rate, fixed at the day certain, produces a revenue sufficient to afford the company a just return for a reasonable time in the immediate future.

In the case of the Central Kentucky Natural Gas Company, Appellant, *v.* Railroad Commission of Kentucky, *supra*, the Supreme Court, in discussing the refusal of the Court below to take into account the effect of changed conditions said:

> "That restriction also necessarily excluded from consideration the profound changes in values, costs of service, consumption of commodity and reasonable return on invested capital which we judicially know took place during the period of more than five years, while the case was pending before the Commission and the Court."

In numerous cases, Courts have indicated that they may take judicial cognizance of the downward trend of prices during the years of the depression. We feel that the Commission may likewise take notice of such fact. If we did not do so, it might well happen that a rate fixed for 1925 upon the then value of the property would subsequently be inadequate to afford a just return if the additions and betterments were considered and price trends disregarded, but that this same rate would be sufficient over that term of years when due consideration is given to price trends decreasing the value of the property upon which the return must be earned. Sections 499-11 and 499-15, G. C., provide the method of ascertaining the facts. The Commission may resort to any information available to keep itself informed of extensions and improvements and *other changes* in the value of the property.

We have endeavored from such sources of information as are available to correctly measure the price trends of telephone property including Accounts 211 to 265, since the day certain. A study was made of the cost prices furnished by manufacturers of telephone equipment over the several years. The trend of land valuation was ascertained from examination of the tax value in communities where the company had its largest real estate holdings, confining such to urban property only. For building trends resort was had to prices indices of the *Engineering News Record*, a recognized magazine in the field of engineering construction. Labor trends were developed from the same sources. Resort was also had to the finding of the Statutory Court in the Chicago case and its study of price level of sales of the Western Electric Company. That Court was there dealing with December 31, 1920 as the date certain and considered the level of that date as 100%, whereas we are dealing with a price level subsequent to June 30, 1925. The trend in price for each year as compared to the preceding years, indicated in the Chicago decision, taking the level of December 31, 1920 as 100%; was 1921, —1.7%; 1922, —10.7%; 1923, +0.2%; 1924, —5.6%; 1925, —1.1%; 1926, —8.7%; 1927, —4.9%; 1928, —10.3%; 1929, —8.6%.

In the Chicago Case, the Court disallowed the advance of 10.2% in Western Electric prices as of November 1, 1930, but held that plaintiff was entitled to a maintenance of the 1930 price level during the years 1930, 1931 and 1932. In harmony with the decision of this Court, we hold that the price for 1931 and 1932 for Western Electric should not be increased.

It would appear that the Chicago Court in fixing its price trend considered only the price trend of Western Electric purchases, probably on the assumption that it was a correct index of the price trend of all telephone property. We, however, have thought it pertinent, as above indicated, to secure price trends of telephone properties from the sources we have indicated in addition to the price trend of the Western Electric which we have applied to equipment sold by that company. We are conscious that there may

be some errors in this computation of price trends, but we feel that we are well within the line of safety in that we have considered only price trends as affecting telephone property, and that such trends are largely built upon the prices of the Western Electric which have not declined to the extent of general commodity prices.

Taking the date certain, June 30, 1925, as 100% and considering the added equipment for each year as 100% as of the year of installation, our examination develops a composite trend applicable to the entire property, exclusive of right of way and working capital, as of the beginning of the respective years and related to the preceding year, as follows, 1926, 98.73%; 1927, 96.97%; 1928, 99.20%; 1929, 101.45%; 1930, 95.65%; 1931, 93.95%; 1932, 88.71%, and 1933, 102.96%. The figures supporting these percentages are too numerous to set out in detail but the manner in which the percentages have been applied to the value of the property for each year is shown in Appendix "B."

An interesting discussion of price trends will be found In re Chesapeake and Potomac Telephone Company, decided by The Public Service Commission of Maryland, November 28, 1933. This Commission considered numerous indices in arriving at its conclusion as to the price trend for the telephone company and exhibits a graph of various price trends and the composite trend arrived at.

When we plot the price trends found by us and compare our graph with that of the Maryland Commission and the graph of the price trends by the Chesapeake Company, we find that all are practically parallel until 1930. After that date our graph parallels that of the Maryland Commission, but indicates values practically an average of those claimed by the Telephone Company and found by the Maryland Commission.

The graph exhibited in the Maryland Commission's decision does not cover the year 1933. During 1933, we find an upward trend in both as to labor and material but a downward trend as to land value, the average of all property indicating a slight upward trend. (See graph, Appendix "N.")

Effect of the Company-Wide Case.

A short review of the "Company-Wide Case" may be pertinent.

The case, known as the Company-Wide Case, was instituted by the Commission on its own motion in October, 1924, for the determination of the property valuation, revenues, expenses and rates of The Ohio Bell Telephone Company for its service as a whole. At that time there were pending many so-called Robinson Law and Pence Law cases, involving the rates for separate exchanges, which had been made effective under bond as provided by those laws. Following that, additional Pence Law cases arose out of the filing by the company of new rates for other exchanges.

With the institution of the company-wide case, the Commission as then constituted determined not to proceed at that time with the separate Robinson Law and Pence Law cases, and the Commission's inquiry has ever since proceeded on the company-wide basis, without separate testimony as to the property value, rates, etc., for the Robinson and Pence Law cases. This course originally had and apparently ever since has had the approval of the City Attorneys interested in those cases, although the Telephone Company has always insisted upon the right to present, and has offered to present, separate testimony with respect to them.

The "date certain" of the inquiry in the company-wide case was June 30, 1925. For the subsequent years the cost of the net additions to the property has been shown.

In view of the holding of the Ohio Supreme Court in the recent case of The Columbus Gas & Fuel Company vs. Commission, No. 23864 (decided after the company-wide case had been submitted to the commission), that in fixing the rates of a public utility, the municipality is the entity, the question arises whether the Commission can lawfully decide the Robinson and Pence Law cases on the record in the company-wide case as it now stands, find the rates heretofore collected in those cases to be reasonable or unreasonable and order the refunder of any portion of the rates

which may be found to be unreasonable; or whether the Commission should now require or permit the Telephone Company to submit evidence of its property value, revenue and expenses for each of those cases separately.

The point has been raised that the Commission cannot fix a just rate for separate exchanges, whether same are involved in Pence Law Cases or not, by considering the value of the property en masse, and that therefore it is without the necessary information to fix a just rate for each exchange as distinguished from a rate based upon the value of the entire property.

Grouping Exchanges of the Company.

The Company divided its exchanges into twelve groups and fixed rates for the several services including business, residence and switchboard. Within each group there are varying charges presumably dependent upon the value of the property as well as upon the cost of the service rendered. This matter has been worked out with great care by the Company and we must assume that the charges for the several services, before the protested advances, within each group and within the exchanges attached to each group were substantially based upon the value of the property used and useful to furnish service to the subscriber.

The Ohio Bell Company operates 163 exchanges, large and small, throughout the territory served by it which includes, together with its connecting companies, the entire State of Ohio excepting Hamilton and Clermont Counties and a portion of Warren and Butler Counties. It has connection with over 300 separate telephone companies in Ohio, not Bell owned. Of the 163 exchanges, 46 are involved in rate proceedings under the Pence Law, the advanced rates of which are now being collected under bond. The rates of the balance are being investigated, but not under the Pence law.

Number of Company Stations.

The Company, through its exchanges, served stations as follows: June 30, 1925, 520,604; June 30, 1930, the year in

which largest number was reached, 717,832; April 30, 1930, the month in which largest number was reached, 721,832; June 30, 1931, 700,330; June 30, 1932, 633,385; June 30, 1933, 529,301; December 31, 1933, 531,426. During 1932 and 1933 there was a severe loss of stations, with a slight recovery during the last six months of 1933.

Exact agreements between rates in municipalities having substantially the same population cannot be expected because there will be a difference in costs due to varying requirements of construction. The size of several communities and the telephone development may be similar, but one community may be limited in its service to its own boundaries while another may have free service to nearby places. Costs of both the construction and service in communities of comparable population may vary and economic differences between the subscribers living in such communities may justify slightly different rates. All services furnished within the City of Cleveland are measured and the rates for suburban Cleveland are fixed in varying amounts dependent upon the class of service rendered.

It is the judgment of the Commission that the company's rates as fixed for each exchange before advanced rates were scheduled, represent a balanced consistent rate structure for the entire territory without unreasonable inequalities as between the rates of the several exchange areas, and are reasonably in harmony with the value of the property used in each exchange. If we were to attempt to determine a separate rate for each exchange upon the appraised value of the property used at that exchange, we would be led into an intolerable lengthening of this case without any assurance that the rate that might thus be established would in any substantial way vary from the relative rates worked out by the company in its group system. This is in harmony with the views expressed by the various legal representatives of the several municipalities as evidenced in a joint meeting with the Commission April 18, 1933, R-5682-5726, especially 5717 and 5721.

In a news dispatch from Cleveland under date of April 20, 1933, widely published throughout the State of Ohio, Mr. Randolph Eide, President of the Ohio Bell Telephone

Company, is reported to have said in commenting upon the meeting of the City Solicitors—

> "Rates for telephone service have been under investigation as a whole on a company-wide basis since 1924. To begin now revaluing the company's property devoted to service to the public exchanges would incur a large expense, both to the company and the municipalities, and would result in additional years of delay in final determination of the case.
>
> Rates in general bear a reasonable relation as between the various grades of service in the community and as between exchanges of the same size and characteristics.
>
> It would appear that the suggestion at Tuesday's meeting of the commissioners and city representatives to value the company's property as a whole to determine whether the rates represent a well-balanced schedule as between classes of exchanges and as between exchanges of the same class, affords an opportunity to work out a solution to the problem. The company always has been willing to co-operate along reasonable lines and will continue to do so in the present instance."

In speaking editorially of the suggestion of fixing the rate for each individual community, on the basis of valuation, expenses and revenues, a leading Ohio metropolitan paper pertinently said:

> "Unless the Commission can get the money to continue to employ an army of public accountants, it is estimated that four or five years more would be necessary to break down the valuations, expenses and revenues to apply to each municipality. To set rates by classification on the basis of state-wide figures, would be a much speedier process, perhaps could be accomplished in four or five months."

At the meeting of the City Solicitors, on April 18, 1933, the Chairman of this Commission reviewed in detail the situation arising out of the company-wide case.

THE COMPANY ESTOPPED.

The Company has at intervals asserted that it reserved its right to test the justness of the rate for each exchange by a separate determination of the value of the property and net income of each by the usual methods pursued in rate cases. The last communication of the company to this effect is dated December 22, 1933, wherein it referred to reservations of its right to offer evidence in the separate cases of the property value, revenues and expenses for the period under investigation for all the Robinson and Pence Law cases separately. The letter of December 22nd, concludes:

> "The Ohio Bell Telephone Company now renews its offer, above referred to, insists upon its right to submit the evidence so offered, and requests that the Commission set a date on which the introduction of the evidence may be commenced."

To follow the suggestion made by the Company would be to nullify most of the work done in this case since the consolidation in October, 1924, of all the then pending cases into the company-wide case. There has been a definite recognition of the propriety of a company-wide method of fixing rates by the Commission, the Legislature and by all parties, except as the Company asserted a reservation, and to halt the determination of this case now and turn back to the situation that existed in 1924, and begin the trial of each Pence Law case separately, would be intolerable. The case must proceed to a conclusion along the route then mapped out and since followed at a great expenditure of time and money.

The reservation of a right as now asserted by the Company is not in harmony with its participation in company-wide valuation. If the Company was not willing to submit to the Order of Consolidation of October, 1924, it should have taken exceptions at that time and had a court review the legality of the order of the Commission. It is too late now to complain of a method in which it seemingly acquiesced, even though it asserted a reservation. We think the

Company is estopped by its actions during the long trial of the Company-wide case.

The Law.

We are not unmindful of the holding of the Supreme Court in the Columbus Gas case that the unit established by the Ohio constitution for dealing with public utility service is the municipality, and not the utility. We do not attempt to avoid this principle, but we do find that under the method pursued in the trial of this case we are fully justified in fixing the rate to be paid in each municipality upon the several relative valuations recognized by the Company when it originally grouped its exchanges and established rates for the several services furnished by each, before the advances which led to the protests now under investigation.

We are not without precedent and authority upon this matter. In its order (P. U. R., 1924 A-1, at page 9) the Indiana Commission referring to Company-wide rate fixation, very similar to the situation in the present case, said:

> "The fixing of rates is a matter which involves considerations other than the matter of revenues and expenses and it is quite practicable that rates be fixed that will be just and reasonable to all subscribers by a grouping of exchanges of like character and the application of a certain schedule of rates to all the exchanges in that group rather than by an attempt to fix the rates for each exchange separately. The policy of consolidating the whole Indiana Bell Telephone rate investigation into one order and considering it as one unit has been adopted by several other states and has been found to be very much more satisfactory to the public, and to the utility."

In Wabash Valley Electric Company *v.* Young, 287 U. S., 488, 77 L. ed., 348, the Supreme Court said:

> "Normally, the unit for rate making purposes, we may assume, would be the entire interconnected operating property of a utility used and useful for the convenience of the public in the territory served, without

regard to particular groups of consumers or local subdivisions. But conditions may be such as to require or permit the fixing of a smaller unit."

See also—In re: Uniform Telephone Rates in Pennsylvania, P. U. R., 1917 D, 259; In re: Mountain States Telephone and Telegraph Co., P. U. R., 1917 B, 277; In re: Indiana Bell Telephone Company, P. U. R., 1924 A-I, p. 9.

Under the circumstances, we are of the view that we cannot accede to the request of the Company as indicated in its letter of December 22, 1933.

Conclusion as to Valuation.

After re-examination of the former finding of this Commission, we now find that the value of the property of The Ohio Bell Telephone Company, as a plant in actual and successful operation, used and useful in the service of the public in all the exchanges of said company, within the State of Ohio, and in intrastate toll service, upon a reproduction new less depreciation basis, as of June 30, 1925, was $93,707,488.

The difference between the Tentative Valuation heretofore found, and the Final Valuation herein fixed, is as follows:

Tentative Valuation, Finding January 10, 1931		$104,282,735
Deductions—		
Allocation to Interstate Service	$2,714,788	
Right of Way reduced to book value	325,247	
Undistributed Construction Expenditures reduced	3,391,674	
Separate Item Going Concern Value	3,592,040	
Working Capital including Materials and Supplies reduced	551,498	
Total Deductions		10,575,247
Final Valuation per Appendix "A"		$93,707,488

Considering additions and betterments and price trends we find the value of such intrastate property was, as of dates subsequent to June 30, 1925, as follows: 1926, $101,767,774; 1927, $111,036,522; 1928, $122,417,735; 1929, $134,765,576; 1930, $145,683,047; 1931, $145,271,663; 1932, $133,625,655; 1933, $126,250,206, an average, for the nine years under consideration, of $123,836,185.

The detailed tabulation of these figures will appear in Appendices "A" and "B". Supporting detail upon which the valuation is based will be further found in Appendices "C", "D" and "E", all of which are made a part of this finding.

All protests filed by either the Company or by the Attorney General on behalf of the telephone users of the State of Ohio or by the several legal representatives of municipalities, touching the valuation of the property, not in harmony with this finding, are hereby overruled.

Revenue and Expense.

Observations on Relative Importance of Rate Base and Expenses.

Having found the value of the property of the company used and useful in the service of its patrons, we enter upon the study of the income derived from the property and the expense of its operations.

Some general comment may properly be made as to the relative importance of the two distinct problems, valuation and net income, which jointly control the proper rate ultimately to be charged for service.

Apparently during the whole course of this proceeding, the valuation has been over-emphasized and years have been consumed on this problem with relatively slight attention paid by the parties to the investigation of revenue and expenses. This seems to be common to most rate cases.

This over-emphasis will appear when we realize that the rate to be charged the consumer should be such as to produce a fair return upon the value of the property. This return is but a percent of the value. Assuming that we hold that the company is entitled to a net return of 7%

upon the value of its property, every million dollars of value will affect the rate payers only to the extent of $70,000 annually, which when related to the number of rate payers in peak years, is less than ten cents per year for each, although a substantial sum for the Company. However, every dollar of expense must be produced by the rate-payer, so that every dollar charged by the company for its operation or as a reserve, becomes a dollar in which the rate payer is one hundred percent interested. Based upon a 7% rate of return, each dollar of revenue and expense has over fourteen times as much weight in the ultimate result as any dollar of valuation. The rate payer and the company, therefore, are deeply concerned whether or not expenses have been improperly charged either as to the character or amount.

We therefore approach the analysis of certain of the expenses asserted by the company and the allowance to be made for them with full realization of their importance, both to the rate payer and to the company.

Income.

We assume that the gross *income* as presented by the company in its various exhibits is correct, as accurately reflected from the books of the company. No claim has been made by the State that the books have been inaccurately kept so far as they reflect the gross income. This appears on Appendix "F."

Expense of Depreciation.

The Commission is charged under the statute with the duty of making reservation out of the income for surplus, depreciation and contingencies, and all such other matters as may be proper according to the facts in each case.

Sections 614-49 and 50 provide that the Commission shall ascertain, determine and prescribe what are proper and adequate charges for depreciation, which shall be such as will provide the amount required over and above the cost and expense of maintenance to keep the property of the public utility in a state of efficiency corresponding to the

progress of the art or industry; the amount so determined to be used for the purpose of renewing, restoring, replacing or substituting depreciated property in order to keep the plant in a state of efficiency.

It has always been one of the perplexing problems of rate making to determine the proper annual allowance, expressed in terms of percentage, for depreciation. This item should be, and is, as capable of exact determination and calculation as is the determination of a proper rate of return. A utility is entitled to earn a fair return upon its investment, as represented by its property used and useful for the convenience of the public, and in addition is entitled to maintain said property in a state of efficiency corresponding to the progress of the art or industry. To so maintain its property, a utility is permitted to earn a certain fixed sum annually for depreciation in addition to the net rate of return. As this depreciation reserve is earned it should replace deteriorated, obsolete and useless items in the capital account to keep the property in the statutory state of efficiency. Therefore, it has been contended by some that the accumulated depreciation reserve should be deducted from the capital account in determining the rate base; that to handle this item otherwise is to permit the utility to earn twice on substantially the same item. However, this contended for method or practice is not the rule in Ohio, and we are bound by the decision of our Supreme Court in the case of Cincinnati *v.* Public Utilities Commission, 113 O. S. 259, wherein it is declared where there is a reserve depreciation account in excess of the actual depreciation found, such excess cannot be deducted from the present reproductive cost.

An important factor in determining the proper depreciation allowance, is the maintenance policy of the company under consideration. This company has from the time of the merger in 1921 carried on a high standard of maintenance and kept its property in good condition and in a high state of efficiency. The line of demarcation between maintenance charge and depreciation charge is often quite dim and undoubtedly many items properly chargeable to reserve are handled as maintenance expense.

Charges that would be considered a major requirement to a smaller utility are merely routine maintenance matter to a utility of the size of the present company.

This Commission found at the time of fixing a tentative valuation of the property that the depreciable property of this Company was on the date certain in a 87% condition. To maintain that condition the company expended from the time of the merger to the date certain in the way of expenses for current maintenance and repairs the sum of $16,385,139.00 and during the same period the net charges to reserve for depreciation amounted to $11,349,664.00. From the date certain to December 31, 1931 the company paid out in the way of expense for curent maintenance and repairs the sum of $42,064,639.00 (a very liberal sum), and its net charges to reserve for depreciation for the same period were $40,956,301.00.

We are especially concerned with the practice of the company in maintaining its property as of the date certain and for the years prior thereto for the reason that the value of the plant as of the date certain is the base upon which the return to the company is computed.

In addition to making the expenditures for maintenance and net charges to the reserve for depreciation as above mentioned, the company at June 30, 1925, the date certain, had accumulated and carried a depreciation reserve balance of $12,560,502.79 divided as follows—Reserve for Accrued Depreciation $12,330,762.95, and Reserve for Amortization of Intangible Capital $229,739.84. As of December 31, 1932, the company showed in its statement to this Commission a reserve for accrued depreciation and amortization of intangible capital amounting to $20,569,893.70, of which sum approximately $306,000.00 is the reserve for amortization of intangible capital.

The balance in the reserve on the date certain represents past accumulations for depreciation after deducting the actual retirements from year to year. These accumulations had been made by annual charges to operating expenses, i.e., by annual segregations of the revenues paid by subscribers for service received. Each year's reservation rep-

resents the company's estimate of the depreciation of its property in that year in serving subscribers, and the net accumulations in the reserve show what payments by subscribers set aside for this purpose are not yet needed, in the company's judgment, for physical retirement of property. In other words, the balance in the reserve shows the accumulated amount set aside to replace depreciated property in the future which customers have paid for in advance of writing the property out of the property and plant accounts.

There is a definite relation between past accumulations from reserves and proper allowance for the future. In the case of Smith *v.* Illinois Bell Telephone Company, 282 U. S., 133, it was held—

> "The allowance for depreciation entering into the ascertainment of the rate base of a public utility may be based on past experience, and should not be continued if shown by such experience to be excessive."
>
> "Results shown under comparable conditions by other utility companies similarly situated, together with past experiences of the company in question, should afford a sound basis for judgment as to the amount which should be allowed as an annual charge for depreciation in fiixing a rate base."

In the opinion in said case the Court further says—

> "While it has been held by this court that property paid for out of moneys received for past services belongs to the company, and that the property represented by the credit balance in the reserve for depreciation cannot be used to support the imposition of a confiscatory rate • • • it is evident that past experience is an indication of the company's requirements for the future. • • • The experience of the company should afford a sound basis for judgment as to the amount which, in fairness both to the public and private interest, should be allowed as an annual charge for depreciation."

We believe that there is a direct relationship between the condition percent of a public utility property and its history as to retirements on the one hand, and the allowance that should be made annually for depreciation on the other. As heretofore stated, the property of the company on the date certain was in a 87% condition.

From the books of the company (Wood Exhibits 12-13 and 15) we find that from the date of merger, September 21, 1921, to the date certain, June 30, 1925, the company made net charges to its depreciation and amortization reserves for various types of property, equal to the following average annual rates.

Depreciation—	
Telephone Plant and Equipment including Office Furniture and Fixtures	3.74%
General Store Equipment	.19%
General Stable and Garage Equipment	16.78%
General Tools and Implements	4.93%
Amortization—	
Right of Way	2.49%

During the same period the company credited its depreciation reserve with amounts equal to the following average annual rates:

Depreciation—	
Telephone Plant and Equipment including Office Furniture and Fixtures	5.50%
General Store Equipment	9.96%
General Stable and Garage Equipment	19.69%
General Tools and Implements	19.79%
Amortization—	
Right of Way	4.39%

Charges equal to the above reserve credits were entered in the company's books as follows:

Charged entirely to expenses—

Depreciation of Telephone Plant and Equipment including Office Furniture and Fixtures	5.50%
Amortization of Right of Way	4.39%

Charged partly to Expenses and partly to Fixed Capital, according to use—

Depreciation on General Store Equipment	9.96%
Depreciation on General Stable and Garage Equipment	19.69%
Depreciation on General Tools and Implements	19.79%

Due to the rapidly depreciating nature of the last three classes of property, the apparent fairness of the rates used, and the relatively small portion of the valuation represented thereby, the Commission does not criticize the depreciation shown by the books for these items. Amounts for Amortization of Right of Way must hereafter be entirely disallowed by the Commission in compliance with the ruling of the Ohio Supreme Court in the case of Columbus Gas & Fuel Company *v.* Public Utilities Commission, 127 O. S. 109.

As the major item of depreciation expense is represented by the amount charged for depreciation on telephone plant and equipment including office furniture and fixtures, it appears that from the date of merger to the date certain the company annually charged as depreciation expense an average composite rate of 5.50% and that its net charges to reserve for depreciation during the same period was equal to an annual composite rate of 3.74%.

It also appears that the company's charges to expense for depreciation for the years subsequent to the date certain were somewhat higher than for the preceding years, averaging 5.60% to the end of 1931. It also appears from the record and books of the company (Wood Exhibit No. 16) that the company made a reduction in its composite rate for depreciation which on December 31, 1931, amounted to 5.8%, to 4.4% as applied July 1, 1932, a net reduction of 1.4% representing a reduction of 24% in its annual rate for depreciation expense, a recognition on the part of the

company that the reserve for depreciation was accumulating in excess of the actual needs of the company and condition of its property to keep the property of the utility in a state of efficiency corresponding to the progress of the art or industry. The company gave similar recognition to changing depreciation requirements by revising its depreciation rates as of January 1, 1922, August 1, 1926, and January 1, 1929.

There have been extensive changes in the fixed capital of the company during the years prior to 1928 as well as the years thereafter due to new construction and retirements of old plant, resulting in the substantial reconstruction of the plant of the company and in the modernization thereof to such an extent as to require comparatively few replacements for some time to come. At the time of the merger, September 21, 1921, the balance in the fixed capital account as shown by the books of the company was $75,269,253. During the years following that date and including the year 1927 the company increased its fixed capital amount, according to its books, to $128,735,984 of which $95,616,505 represented gross additions, from which it readily appears that new construction and purchases equal in money value the fixed capital at September 21, 1921, was completed some time during the year 1927. Up to December 31, 1931, the book value of gross additions amounted to $184,971,637 and gross deductions to $88,419,086, disclosing also that the entire money value of the fixed capital at September 21, 1921 became fully retired some time during the year 1931. The gross deductions at the end of the year 1930 amounted to $74,674,366, being within $600,000 of the entire money value of the fixed capital at September 21, 1921.

A summing up of the foregoing proimpts us to conclude that for maintenance of the property in the percent condition as found by this Commission as of the date certain, the practice of the company demonstrated that a composite rate of 3.74% of the depreciable property expended annually for depreciation was amply sufficient, and considering also the large sums expended by the company for the years prior to and subsequent to the date certain for maintenance and repair, and that the plant has been substan-

tially reconstructed and fully modernized, that in order to allow for annual statutory depreciations both realized and unobserved, a composite rate of 4% of the depreciable property is a fair and just allowance to be made annually for depreciation expense, and it is our conclusion and finding that said rate be fixed and allowed in this case to be computed on the present value of the depreciable property as of the date certain, and for years subsequent to the year 1925 to be computed upon the present value of said property as of the date certain plus net additions to the depreciable property. The value of the depreciable property of the company as of the date certain having been found to be $84,330,894, the amount to be allowed for depreciation expense for the year 1925 is hereby determined and fixed at $3,373,236. This allowance to be allocated between interstate and intrastate operations per Appendix "F." The respective allowances for depreciation expenses for subsequent years, computed on the basis herein determined, are set forth in Appendix "K" hereto attached.

Comments on the License Contract.

Important issues are raised in the consideration of the license contract existing between the American Telephone & Telegraph Company (licensor) and the Ohio Bell Telephone Company (licensee) by which the former was to furnish to the latter certain appliances and render certain specified services.

The contract in force at the date certain was entered into between the several parties on October 16, 1923. Briefly, it provided that the licensor granted to the licensee, license to use its patented receivers, transmitters and induction coils (telephones) and in addition thereto was obligated to furnish to the Ohio Company certain engineering, financial and advisory services, for all of which benefits the licensee agreed to pay to the licensor 4½% of its total gross earnings payable in monthly installments and computed as provided for in the contract. On January 1, 1926, this percentage was reduced to 4%. Effective January 1, 1928, the license contract was again modified by providing for the sale by the American Company to the Bell Company of the

patented articles furnished under the original license contract, the Bell Company assuming the obligation to replace and repair the instruments. The royalty contract was changed so that the Bell Company paid only 2% of the gross revenues thereafter until January 1, 1929, when the payment was further reduced to 1½%.

The fact that the license contract provided for the furnishing of instruments and service at the date certain and was later modified so as to exclude the rental of the instruments and include only the service, makes it necessary to give it a different effect in the several years.

In the Illinois Telephone case the Supreme Court said in substance that specific findings should be made with regard to the cost of the services rendered and instruments furnished by a parent company to an operating telephone company under a license contract, and as to the reasonable amount which should be allocated to the operating expenses of the intrastate business of the utility in determining whether rates are confiscatory.

Chief Justice Hughes said—

> "In view of the findings, both of the State Commission and of the Court, we see no reason to doubt that valuable services were rendered by the American Company, but there should be specific findings by the statutory court with regard to the cost of these services to the American Company and the reasonable amount which should be allocated in this respect to the operating expenses of the intrastate business of the Illinois Company in the years covered by the decree."

The Findings of the Statutory Court.

The Statutory Court in compliance with the instruction of the Supreme Court has made certain findings as to the cost to the parent company of this service as covered by its specific findings 22 to 26 inclusive.

We have carefully studied the opinion of the Statutory Court and the evidence adduced in its support and the evidence adduced by the State in the instant case. We have the highest regard for the findings of this Court and recognize the fact that it had before it the witnesses who testified

to various items touching the cost of this service, and we regret that we cannot follow in its determination of the cost to the American Company for services furnished by it under the license contract.

Rental of Instruments.

As to the rental of the instruments, we are not in harmony with the Court as to the cost of this service to the American Company especially on the item of 7% depreciation in Ohio. It appears from the evidence that the American Company charged the licensees 7% depreciation as a part of the cost of its service, but when it sold the instruments to the licensees such depreciated value was disregarded and a profit of $14,395,800 was realized for all such instruments so sold. In computing the cost to the American Company for furnishing the instruments we have reduced the revised 6% depreciation made by the company after the Chicago decision, to 3% as amply sufficient to cover this item in view of the sale price of the property. The $14,395,800 realized as a profit in this sale was placed in the surplus fund of the American Company designated in this case as a reserve for contingencies and asserted to be for the purpose of protecting the licensee companies against patent infringement liability. There is no evidence in the record of any expense being incurred during any year on account of such liability.

The License Agreement.

The contract provides that the licensee is entitled to receive from the licensor in addition to all other services and benefits accruing to the licensee, the described services and privileges which may be briefly summarized—

(a) The right to use all telephonic devices covered by patents owned by the licensor and all new improved apparatus in the art of telephony resulting from experimental work under the direction of the licensor, and protection against all suits for infringement.

(b) The continuous prosecution by the licensor of research work in the development of the art and the plans

designed to promote economy and efficiency in equipment of the plant of the associated companies.

(c) Advice in engineering, traffic, operating, commercial, accounting, patents, legal, administrative and other matters pertaining to the successful conduct of the telephone business.

(d) Advice and assistance in any financing required to be done by the licensee in the extension of its plant or improvement to its system, and assistance in marketing licensee securities and other necessary financial support.

(e) The right to extend to subscribers of the licensee the connections provided between its system and the system of other associated companies and their subscribers.

(f) Active assistance in connection with such measures as will best protect the health of employees and in other ways conserve the high quality of service and maintenance by the licensor of various pension and insurance plans.

(g) The right of the licensee to extend to its connecting companies the benefit of the advice and information that the licensee may receive from the licensor.

In order that the services may be promptly performed, the licensor will—

(a) Render available for use of the Bell Company all products of the licensor's research and all inventions, etc., relating to the art of telephony, which, after investigation, are pronounced by the technical experts of the licensor to be of practical use.

(b) Maintain continuously an organization of specialists to relieve the licensee from the necessity of performing such work.

(c) Maintain facilities for connection between the system of the licensee and the system of other associated companies.

The contract provides for full service between the exchange of the licensee and the toll lines of the licensor setting out provisions for payment of interline service.

Field Occupied by the American Telephone & Telegraph Company.

It is impossible to determine with any correctness the value and cost of the service rendered by the American Company to its Bell subsidiaries unless we comprehend the wide field occupied by this company.

The American Company owns directly or indirectly more than 90% of the combined voting stock of the 24 companies associated with it as the Bell system, together with the long distance lines which connect the wires of the different companies. The Bell system forms an inter-communicating system of nearly fourteen million telephones with which are connected the lines of nearly seven thousand other companies and more than twenty-six thousand rural lines covering the entire United States. Service is provided to Canada, Cuba and New Mexico by wires and by radio telephone to most of the countries of Europe, South America, South Africa and the islands of the sea so that 92% of the entire telephones of the world can be reached by the Bell system.

In 1931 the company introduced the use of the teletype writer, a valuable adjunct to the newspaper service.

The company owns 98% of the stock of the Western Electric Company, 50% of the Bell Telephone Laboratories by direct ownership and practically the remaining 50% through its ownership of the Western Electric; all of the stock of the Bell Telephone Securities Company, the Eastern Telephone and Telegraph Company of Canada and 50% of the stock of the Cuban Company.

The Bell Telephone Company of Canada, of which stock the American Company owns 24%, owns and operates toll lines and telephone exchanges in Quebec and Ontario. Through the Cuban Company it owns certain valuable concessions and rights in Cuba and has submarine cables to that island.

Western Electric Company.

This company manufactures and distributes telephones and other electrical apparatus mostly to the Bell system. It is also the purchasing agent for that system. Its largest

manufacturing plant is at Hawthorne, Illinois, with at least two other important plants. This company formerly conducted foreign business which in 1925 it sold at a large profit. Its present territory now corresponds to that of the Bell system. Upon the sale in 1927 by the Western Electric of its foreign business a cash dividend of $48,000,000.00 was received by the American Company, which was added to the surplus of the company.

Certain other companies, such as the Graybar Electric Company, were organized as fully owned subsidiaries of the Western Electric, but have since been sold.

The Bell Telephone Laboratories.

The American Company and the Western Electric own jointly the Bell Telephone Laboratories, it being nearly all owned by the American Company through its ownership of the stock of the Western Electric. This company took over all the research and development functions formerly performed by the Western Electric.

The inventions of the Telephone Laboratories have contributed to the progress of electrical science outside the strictly telephone field. To make these developments available in such other fields the Electrical Research Products Inc. was organized in 1926, wholly owned by the Western Electric and through it by the American Company. Non-telephone activities were thus given special attention without conflict with the telephone work. Such activities relate to submarine cables, phonographs, talking motion pictures and many other activities.

In 1930 the American Company acquired the Teletype Corporation now operating as a subsidiary of the Western Electric. The American Company also owns the Bell Securities Company to facilitate transactions in Bell Telephone securities.

Sale of Telephone Instruments.

In 1927 the American Company sold to the associated companies the telephone instruments formerly maintained by it and reduced its license fee as heretofore stated.

Other Non-Telephone Operations.

The American Company has other contracts with telephone companies and is engaged in the development of the use of telephone wires for broadcasting and has developed short wave transmitting telephone stations for foreign service and for communication with airplanes and with ships at sea. The company through its research activities has secured patents covering inventions of its research laboratories in the field of radio and has recently turned over to the Radio Corporation of America the right to manufacture and distribute radio equipment utilizing such inventions. It has also been active through its laboratories in the development of the art of television and telephoto and has engaged in many other activities reaching out and developing new sources of profit not connected with telephone business.

The American Company has recently submitted to the tax authorities of the State of Ohio its statement of the service covered by its license contract and has stressed the fact that practically all the information that it gathers through its research laboratories is transmitted to the associated companies within the several states by bulletins, pamphlets and letters, stating specifically that it is not customary for any of its operating force located in New York to visit the fields for actual contact with the operation of the plants within this State. They will, of course, if occasion requires, send men into the field.

The balance sheet of the American Telephone & Telegraph Company for 1925 shows total assets of $1,645,565,373.91 of which only $1,027,448,629.48 is its investment in the stocks of the associated telephone companies, leaving more than $600,000,000.00 as representing other assets than its interest in the associated operating companies, or approximately 62% of its assets represented by its holdings in its associate Bell companies and 38% representing other assets.

License Contract Costs.

The business of The American Telephone and Telegraph Company is carried on by thirteen separate and distinct

departments. One department known as the Long Lines Department is not claimed to have rendered any service under the license contract and hence has no part in this proceeding. The remaining twelve departments, each of which the Ohio Bell Company claims to have rendered service of benefit to it under the license contract, are the following: (1) Operation and Engineering; (2) Development and Research; (3) Information; (4) Personnel; (5) Public Relations; (6) Treasurer; (7) Comptroller; (8) Secretary; (9) Administration (Incl. Sundry Items); (10) General Service Bureau; (11) Department of Operation—C (General) and (12) Legal.

Each of these twelve departments kept separate record and account of its own expenditures and the purpose thereof, but no attempt has at any time been made to designate what portion of the annual expenditures was strictly license contract expenditure and what was not, and it devolved upon the officers and witnesses for the company to separate such expenditures between license contract expenditures and non-license contract expenditures for the purpose of this case according to their judgment.

While numerous court decisions have in the past sustained license contract payments to the American Company in the sums fixed by the contract as proper operating expenses of the Associate companies, those decisions must be considered in the light of the recent decision of the Supreme Court in the Illinois Telephone Company case heretofore cited, and it is our conclusion that said court in its decision intends that the payments by the telephone company to the American Company for license contract services be restricted to the actual cost to the American Company of benefits conferred upon the operating company or to the amount charged therefor whichever is the lower. This requires us to ascertain the actual cost and the nature and character of the services rendered, and allow as operating expenses only for such services as are essential and beneficial to the Ohio Bell Telephone Company in the operation of the utility. The rate payer is not required to pay for something which is not of actual service or benefit to the utility in rendering its service to the public. We,

therefore, feel constrained to inquire into the various items of expenditure of the operating company under the license contract. We have disallowed many of the items, as will hereinafter appear, either because the scope of the work and service were in the interest of and for the sole benefit of the holding company rather than for the licensee company, or that the particular service of the American Company was not rendered for the Ohio Bell Telephone Company even though such service may have been of service or benefit to other companies of the Bell System or other affiliates of the A. T. T. Co.

The Company has submitted as part of its evidence what it claims to have been the cost to the American Company of rendering license contract service by each of the twelve departments for the respective years 1925 to 1931 inclusive. The figures for the respective years so claimed by the company are shown upon Appendix "J" hereto attached. The Company then in turn allocated said operating expenses to the Ohio Bell Telephone Company as is shown in said Appendix "J."

(1) Department of Operation and Engineering.

The functions of this department consist entirely of rendering service to the operating telephone units of the Bell System. The State admits these services are of value to the Bell Company and concedes the entire claim of the company. We are disposed to and do allow the amounts as claimed in full.

(2) Department of Development and Research.

It is claimed by the company that this department conducts fundamental research in the field of electrical communication to the end of producing improved instrumentalities for giving communication service; and that it is the further function of this department to prepare the fundamental requirements for the installation, operation and maintenance of new equipment.

The State admits that this department does much to benefit the associated companies, but we are of the opinion that numerous expenses and costs claimed are not related

to Ohio Bell Telephone operations and do not constitute a proper charge under the license contract. This appears self evident from the nature of the service for which the expenditures are made. We are disposed to and do eliminate and disallow all costs and expenses incident to the following services and items: picture transmission, television, radio and submarine cable telephone connecting equipment and circuits, radio transmission systems, vacuum tubes, photo electric cells and submarine cables. These items and amounts charged for each, appear in Exhibit A-118-B. The amounts disallowed for the year 1925 and subsequent years to 1931 inclusive are set forth in Appendix "I" hereto attached.

The remainder of the costs claimed by the company in the Department of Development and Research will be allowed as proper license contract expenses.

(3) Information Department.

It is the claim of the Company that the Information Department advises the associate companies with respect to their own publicity and that it conducts general publicity in their interest, and that the expenses of the Department are for advertising space, payment for printed matter, booklets, etc., salaries and incidental expenses and that by far the greater part of the expense of this department is for advertising. It appears to us that this advertising does not relate to the Ohio Bell Telephone Company as such; that much of it relates solely to the A. T. & T. Co., some to the Western Electric and to the Bell Telephone Laboratories work. Considering also that the Ohio Bell Company pays its advertising bills as a part of its general operating expenses, we do not consider that the general advertising of the A. T. & T. Co., national in scope, should be paid by the Ohio rate payer and therefore we disallow all of the costs claimed for the Information Department.

(4) Personnel Department.

It appears to us that the scope of the work of this Department is rather in the interest of the holding company than that of the licensee and the cost thereof not proper

charges against the rate payer of the operating company, but considering that the State has admitted the propriety of some of the items and objected to others, we are disposed to adopt the State's figures and disallow those items set forth by the State in Appendix D of its brief consisting of the following: special training A. T. & T. Co. employees, "other" items shown in Column 4 Exhibit A-150-B, Public Relations, "other" items shown in Column 4 Exhibit A-151-B and interest on employees' benefit fund, Exhibit Heiss No. 10. Supl.

The items so disallowed for the years 1925 to 1931 inclusive are set forth in Appendix "I" hereto attached. The remaining items of cost in the Personnel Department will be allowed as claimed.

(5) Public Relations Department.

Mr. Heiss, witness for the Company, testified:

> "The Department of Public Relations represents companies of the system before the federal government, also in work with national trade and industrial organizations. This representation is given both on matters which are of general interest to companies and on matters which, while affecting only some particular company, may sooner or later benefit others."

There is no evidence that any work of this Department was specifically rendered or of service to the Ohio Bell Telephone Company and we do not believe that any part of the cost of this Department should be paid by the Ohio rate payer and therefore the total amount claimed for the Public Relations Department is disallowed.

(6) Treasurer's Department.

It is claimed by the company that the function of this Department is the custody of the cash and securities of the company; receiving and disbursing its funds including the payment of payrolls and expenses; the making of advances to the associate companies; investing the surplus cash on hand in short time securities; to issue, transfer and register the securities of the company including the issue to the

employees of stock under the employees' stock plan, and conduct financial research and to develop methods for improving practices in its own office and in the offices of the associate companies' treasurers; in personal consultations and correspondence with the treasurers of the associate companies and their offices on specific questions.

The costs of this department are divided into six groups as follows:

1. Cost of handling new security issues.
2. Cost of servicing outstanding securities of the A. T. & T. Co.
3. Cost of handling and making advances sought by associated companies.
4. Cost of financing general department of A. T. & T. Company.
5. Cost of handling employees stock plant.
6. Cost of advising associated company and long lines in their treasury work.

It appears to us that [redacted] of this Department, with [redacted] are entirely for the benefit of the A. T. & T. Com[redacted] not proper charges against the operating company and we therefore disallow all items charged for under the following items: direct distribution of securities, servicing securities, handling funds and making advances, financing general department and handling employees' stock plan, all as appear in Exhibit III, N. R. 861-864-863 and 862. These various items are set forth in detail in Appendix "I" attached hereto. The balance of the cost claimed by the Company in said Department will be allowed.

(7) Comptroller's Department.

This department deals largely with statistics, general books and records and reports and we are inclined to the view that these activities are rather those pertaining to the holding company than to the operating companies. However, the State concedes the propriety of some of the charges as proper items of expense and we therefore adopt the State's position in allowing part and disallowing other

items. The figures disallowed are those set forth in Appendix D of the State's brief consisting of the cost pertaining to the following functions of that department: general books and records, chief statistician, Bell system reports, and proportion of subheads "undistributed" and "administration" appearing in Exhibit A-155-B. The items so disallowed are shown on Appendix "I" hereto attached. All other items included in said Department cost consisting of Bell system methods, chief traveling auditor, chief accountant and proportion of sub-heads "undistributed" and "administration" are allowed. The items so allowed for the respective years appear in Appendix "H" hereto attached.

(8) Secretary's Department.

The duties of this Department have been testified to as consisting of the usual duties performed by any high type secretary.

It appears clear to us that the expenses of this Department should not be paid by the rate payer for the reason that the services are solely for the benefit of the holding company and not for the operating company and therefore all costs claimed for this Department will be disallowed.

(9 and 10) Administration Department and General Service Bureau.

The costs of the Administration Department pertain to the general administrative officers and of their assistants of the American Company, and the function of the General Service Bureau is to perform the work of the Company more or less common to all the departments where it is considered that the work may be handled more advantageously by a central organization.

It is claimed that if the General Service Bureau did not exist, the work performed by it for the various departments would have to be performed by each department separately and therefore add to the cost of service of other departments. It is also claimed that the general officers supervise the activities of the various departments and that therefore the cost of the Administration Department might

be logically spread among the different departments of the American Company and thereby add to the cost of the license service rendered to the operating company.

We recognize the force of these contentions and consider that part of the costs of the Administration Department and General Service Bureau should be borne by the operating company, but we are not disposed to allow the full amount claimed for the reason that we have not allowed the costs of operation of a number of the departments, and reduced the amount allowed in other departments. Therefore it would be unfair to allow all of the costs of these two departments. It is our conclusion that a proper amount to be allowed, in the absence of testimony to the contrary, is just one-half of the amount claimed by the company as the costs incident to the Administration Department and General Service Bureau. The amounts so allowed (and disallowed) for the various years 1925 to 1931 inclusive, appear in Appendix "H" hereto attached.

(11) Department of Operation—C (General).

This Department is said to furnish the associated companies with advice in matters pertaining to negotiations of purchases and sales of operating properties.

From the testimony of Mr. Heiss on this subject we are satisfied that these expenses are primarily for and directly intended to benefit the Western Electric Company and the American Company as a holding Company. For that reason we have decided to disallow all costs of this department.

(12) Legal Department.

We are not disposed to question the propriety of these costs and therefore have decided to allow the full amount claimed for this department, and shown on Appendix "H" hereto attached.

It might also be noted that the State at no time contradicted any of the items of expense of said departments, nor questioned the methods or ratios used or the amounts allocated to the Ohio Bell Company or to its intrastate business as presented by the company, nor did the State offer or advocate any other allocation of any of the items of ex-

pense. The objections on the part of the State, where made, were to the relevancy of the cost of items of expense for services not essential nor beneficial to the operations of the Ohio Bell Company.

Allowance and Disallowances of Departmental Costs and Expenses.

Summing up what has been said pertaining to the twelve departments aforesaid and in order to set forth the specific amounts allowed and disallowed there is attached hereto Appendix "H" to which reference is had to ascertain the total departmental expenses allowed for the years 1925 to 1931 inclusive, and appearing upon the same appendix is a table of departmental expenses disallowed.

Office Space and Furniture Expense.

The A. T. & T. Company also provided office space and office furniture and fixtures to its said twelve departments and it asks compensation therefor from the operating company as part of the costs of operation of said twelve departments. (Exhibit A-167-B). We consider a part of this expense to be justified, but are disposed to allow but one-half thereof for the same reasons that but one-half of the costs of the Department of Administration and General Service Bureau were allowed as heretofore stated in this opinion and finding. The amounts so allowed are as follows: 1925, $3,157.00; 1926, $731.00; 1927, $837.00; 1928, $912.00; 1929, $974.00; 1930, $1,015.00 and 1931, $1,078.00—Entered on Appendix "G."

Instrument Expenses.

The American Company during the years 1925 to 1927 inclusive incurred cost for maintaining the receivers, transmitters and induction coils (telephones) furnished to the Ohio Bell under the license agreement. This maintenance expense as shown in Exhibit A-162-B was $61,291 for the year 1925; $81,311 for the year 1926 and $86,754 for the year 1927. No question has been raised as to the accuracy of these figures and the Commission finds the same to be

reasonable and allows the sums mentioned as part of the operating expenses for the respective years mentioned.

We conclude and find for the reasons already mentioned that the reasonable amount of cost of the expense of depreciation is represented by an annual depreciation rate of 3% applied to the cost of such instruments, and that such reasonable amounts are found to be as follows: for the year 1925, $51,793; for 1926, $56,506 and for the year 1927, $58,882.

The American Company is also entitled to charge as a cost of furnishing such receivers, transmitters and induction coils (telephones) under the license agreement an annual return of 6% of the reasonable value of such instruments. This 6% computed on the average current cost less accrued depreciation as shown on line 3 Exhibit A-163-B and hereby allowed is as follows: for the year 1925, $95,300; for the year 1926, $103,970, and for the year 1927, $108,343. All allowances under this heading appear on Appendix "G."

Patent Infringement Expenses.

The license agreement also provides that the licensee is entitled to receive from the licensor services in relation to patented and improved devices, and immunity from loss by reason of infringements.

The possibility of infringement damage is too remote to charge the rate payer for a cost or expense which does not exist and not likely to arise when we consider that during all the years from 1925 to the present time there has been no cost to the American Company in the way of loss or damages because of patent infringements of apparatus used by the patrons of the Ohio Bell Company.

We consider that having allowed all of the legal expenses claimed for by the American Company that whatever services may have been rendered in the way of defending infringement cases have been fully compensated in the allowance of legal services already mentioned. For said reasons no amount is allowed as operating expenses under said license contract for alleged patent infringement by

way of losses, damages or otherwise, except as already noted in the way of legal expense.

Taxes and Costs Incurred in Holding Funds Available.

The American Company during the years herein under consideration paid a large amount annually in the way of taxes and also, during the same years, held millions of dollars available so that it might, as claimed by it, respond instantly to demands for sums by any of the associate companies.

The Illinois Statutory Court reached the conclusion that the cost to the American Company of holding funds available to meet current cash requirements of the associate companies, as well as taxes paid by the American Company, are not costs and expenses covered by the contract and should not be included under the allowances for operating expenses. This Commission has come to the same conclusion and disallows any and all claims of said items of cost as a part of the operating expenses of the Ohio Bell Company.

License Contract Costs for 1932 and 1933.

No evidence has been offered of the costs to the American Company for services to the Ohio Bell Company under the License Contract for the years 1932 and 1933 and we are disposed to allow as expense for allowable services for said years the same amount as allowed for the year 1931 or the amount actually paid by the Ohio Bell Company for the years 1932 and 1933 whichever is the lower. The amount therefor to be allowed for 1932 is $521,084. It appears from the record that the Ohio Bell Company paid to the American Company for its services under the contract for the year 1933 the sum of $466,923. Said sum being lower than the amount allowed for the year 1931, we allow the amount as actually paid for that year. The various sums here allowed are set forth in Appendix "G" hereto attached.

Total Expenses and Deductions.

A summary of expenses and deducted allowance are shown on Appendix "F."

Rate of Return.

The Company is entitled to a fair and reasonable return on the value of the property used and useful in the rendition of the service to the public. The Supreme Court of the United States upon numerous occasions has spoken on fair rate of return to a public utility, and while it is not necessary to enter upon an extended review of said decisions, we choose to refer to a few of them which aid us in arriving at a proper determination of what is a fair and reasonable return in this case.

It was said by the court in the case of Smith *v.* Illinois Bell Telephone Company, 282 U. S., 133, 75 L. Ed., 255:

> "A rule as to rate of return cannot be laid down which would apply uniformly to all sorts of utilities; what may be a fair return for one may be inadequate for another, depending upon circumstances, locality and risk."

A 7% rate was found adequate in this case.

And again, in the case of Willcox *v.* Consolidated Gas Company, 212 U. S., 19, 53 L. Ed., 382 the court said:

> "There is no particular rate of compensation which must, in all cases, and in all parts of the country, be regarded as sufficient for capital invested in business enterprises. Such compensation must depend greatly upon circumstances and locality; among other things the amount of risk in the business is a most important factor, as well as the locality where the business is conducted, and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. • • • The less risk, the less right to any unusual returns upon the investments."

A 6% rate of return was approved in this case.

The court in the case of McCardle *v.* Indianapolis Water Company, 272 U. S., 400, 71 L. Ed., 316, found a 7% rate necessary to be adequate, and in the case of Des Moines Gas Company *v.* Des Moines, 238 U. S., 153, 59 L. Ed., 1244,

and Cedar Rapids Gas Light Company *v.* Cedar Rapids, 223 U. S., 655, 56 L. Ed., 594, it approved a 6% rate of return.

A much cited case is that of Bluefield Water Works and Improvement Company *v.* West Virginia Public Service Commission, 262 U. S., 679, 67 L. Ed., 1176. The court said:

> "What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertaking which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

In Dayton-Goose Creek R. Co. *v.* United States, 263 U. S., 456, 69 L. Ed., 388, we find the following expression:

> "By investment in a business dedicated to the public service the owner must recognize that, as compared with investment in private business, he cannot expect either high or speculative dividends, but that his obligation limits him to only fair or reasonable profit."

The Supreme Court in United Railways & Electric Company *v.* West, 280 U. S., 234, 74 L. Ed., 390, decided that a rate of return of less than 7.44% was confiscatory and indicated that under some conditions an 8% rate would be no more than necessary. That court at a later date upheld a

7% rate of return for an electric power company. Wabash Valley Electric Co. *v.* Young, 287 U. S., 488, 77 L. Ed. —.

In the recent Chicago case, many times heretofore referred to, the Statutory Court fixed a rate of return ranging from 7½% beginning in 1923 to 5½% for the year 1932.

The Company here under consideration enjoys a virtual monopoly in the territory in which it operates; its business constitutes one of the most substantial and profitable utility businesses in the State; its properties are favorably located in serving many of the large and thriving communities of Ohio; its management is of a high grade of efficiency; its financial position, because of its subsidiary character, is of a very high order, and it has been able by reason thereof to secure funds for its additions and betterments without going into the open market for money and there is no indication that it will be required to enter the public market for finances in the immediate future. It may be said the element of risk to the investor as applied to this company is negligible.

In the Chicago case the court announced that a public utility enjoying the advantages of the Illinois Bell Company is not entitled to the large earnings made by many undertakings during periods of great prosperity, and, on the other hand, its return in times of business adversity should not be reduced to the extent that many private corporations have been impaired.

While a higher rate of return might be proper for the early years under consideration in this proceeding, the present business conditions, generally, do not make unfair or confiscatory a low rate of return to a long established and permanent business such as that of the Ohio Bell Telephone Company.

Considering all matters herein referred to, this Commission is of the opinion and so finds the fair rate of return on the average fair value of the Company's intrastate property to be 7% for each of the years 1925 to 1929 inclusive, 6½% for each of the years 1930 and 1931 and 5½% for each of the years 1932 and 1933.

Applying the net operating income found by this Commission to have been received by the Company for the years

1925 to 1933 inclusive to the rate base found by the Commission, we find the Company received on its intrastate business the following rates of return, namely: 1925, 8.95%; 1926, 9.01%; 1927, 8.79%; 1928, 8.57%; 1929, 8.09%; 1930, 7.52%; 1931, 7.64%; 1932, 6.18%; 1933, 5.51%. This return is in excess of a fair return under conditions existing during the years mentioned.

Applying the rate of return as herein found to be fair and reasonable to the rate base applicable to the intrastate business for the respective years we find that the Company was entitled to earn as its net income the following sums: for the year 1925, $6,559,524; 1926, $7,123,744; 1927, $7,772,557; 1928, $8,569,241; 1929, $9,433,590; 1930, $9,469,398; 1931, $9,442,658; 1932, $7,349,411; 1933, $6,959,232.

We therefore further find that the Company collected and received on its intrastate business an excess net income for said years, as follows: 1925, $1,822,647; 1926, $2,041,483; 1927, $1,986,610; 1928, $1,925,301; 1929, $1,463,347; 1930, $1,481,689; 1931, $1,659,760; 1932, $908,335, a total for said years of $13,289,172. There appears to have been no excess net income for the year 1933. See Appendix "M" for detail figures.

The Commission in the company-wide case fixed June 30, 1925 as the date certain for the valuation of the property. Many Pence Law cases were begun prior to that date, some as much as two years. The Commission has fixed the value of the property and found an excess rate as of that date, and has no complete evidence upon which it may determine the amount of excess payment if any, that may have been made prior to June 30, 1925. This fact may require further investigation as to possible excessive returns in the Pence Law cases between the date of their inception prior to June 30, 1925, and June 30, 1925, the date certain in the company-wide case.

It is, therefore, the finding of this Commission that the rates, charges and schedules of the Company for services rendered, existing on the date certain and subsequently charged and collected, are unjust and unreasonable and that the Company be required to submit new schedules setting forth rates and charges as of the date certain, giving first

consideration to a proper reduction of the increased rates so charged and collected, which shall produce to the Company net income not in excess of that herein found to be fair and reasonable as of June 30, 1925 in order that the Commission may fix and determine the just and reasonable rates and charges as of said date.

It is the further finding of this Commission that of the excess net income collected by the company, as herein found, there be repayment by the Company in manner provided by law, to the customers entitled thereto.

Orders will be entered in harmony with the findings contained in this opinion.

THE PUBLIC UTILITIES COMMISSION OF OHIO,
By FRANK W. GEIGER,
CHARLES F. SCHABER,
Commissioners.

Dated at Columbus, Ohio, this 16th day of January, 1934.

DISSENTING OPINION.

I am obliged to dissent from the majority findings in this case, for the following reasons:

1. The State protested against the tentative fair value (as of June 30, 1925) on the ground that it was too high; the company protested on the ground that it was too low. Both Sloan's and Williams' appraisals (for the company) as of that date were in excess of $140,000,000. State's witness Hagenah's appraisal, omitting certain items, was approximately $113,000,000. The total tentative value as found by the Commission was $104,282,735, which was even less than the actual book cost of the property. It is my judgment the tentative value was unquestionably too low, and should have been increased substantially in the final valuation, witness the fact that in the recent case of Illinois Bell Telephone Company *v.* Gilbert, et al., 3 Fed. Supp. 595 (the so-called Chicago case), the fair value of similar telephone property as of June 30, 1925, was found by the three-judge Federal Court to be more than 20% higher than its book cost.

2. Instead of increasing the total tentative value, which was lower than the book cost of the property as heretofore stated, the majority findings, without any change in the pertinent evidence have cut the further sum of $7,860,459 from the tentative value, thereby reducing the final value to a point far below the actual cost of the property, as of June 30, 1925. In my own mind that cannot be justified; nor is it clear how one of the now concurring Commissioners who in 1931 found the tentative value as of June 30, 1925, to be more than $104,000,000 can now find the value of the same property, as of the same date, to be approximately $96,000,000.

3. For similar reasons the majority findings of fair value for the succeeding years, which start with the low final value as of June 30, 1925, and are for each year much less than even the book cost of the property, are, in my judgment, too low and therefore unfair.

4. By the application of so-called cost trends, the majority findings have still further reduced the value of the property for the years subsequent to June 30, 1925. These cost trends applied in the majority findings do not reflect telephone construction costs. They were derived from trade magazines and other publications not in evidence, and as to which the telephone company has had no opportunity to be heard. Moreover, costs are again on the increase, in fact one of the results of the Government's program is to bring about increases in labor and material prices, and consequently an increase in construction costs. I cannot see that the majority findings have taken that fact into consideration. See McCardle *v.* Indianapolis Water Company, 272 U. S. 400.

5. In reducing the tentative value of the right of way from $1,568,281 to $1,243,034, the majority findings have deviated from the unbroken practice of the Commission in previous cases; have rejected the evidence of the State's witness, Hagenah, and disregarded the decision by the Federal Court of this District in the recent case of Ohio Associated Telephone Co. *v.* Commission, where the court

expressly declined to limit the value of the right of way to the amount shown on the company's books.

6. Based on all of the evidence, as I read it, including that of State's witness, Hagenah, the percent condition of the property as of June 30, 1925, should have been 90% instead of 87%, and for the succeeding years should have been in excess of 90%, due in part to the addition of more than $160,000,000 of new property subsequent to June 30, 1925.

7. The reduction in the percentage allowance for undistributed construction costs or general overheads from 17.25% in the tentative value to 15% in the final value, without any change in the evidence, and the use of 15% for that purpose for the succeeding years is not justified. State's witness, Hagenah, himself testified to 17.25%. In reality the majority findings have not even allowed 15% for general overheads, having omitted any allowance for engineering in the case of many major items of plant. Also, by applying the less-than-15% to a much lower property value than the 17.25% was applied to, the majority findings have still further reduced the amount found for overheads in the tentative value.

8. The reduction of the amount for working capital from $3,500,000 in the tentative value to $2,948,502 in the final value, without any change in the evidence, is equally unjustified. Even the amount of $3,500,000 found by the Commission in the tentative value (and now reduced by $551,498) was less in percentage than the allowance for this item in any other telephone case decided by the Commission of which I have knowledge.

9. In the matter of Construction Work in Progress, for which no amount has been allowed in the majority findings, a utility is compelled to provide the money with which to pay for plant in process of construction. In Ohio it is taxed upon that plant as any other property. There is no sensible reason why it should have been excluded from the rate base. It was included in the rate base in the Chicago case and has been likewise included in many previous cases.

10. Under the evidence in this particular case a separate finding for going concern value was not only proper but necessary. The percentage allowance for that item in the tentative value was lower than in any case of which I have knowledge. Instead of increasing the tentative value allowance, the result of the majority findings is to now reject the item entirely. Certainly I cannot concur in that. In the Chicago case the allowance for going concern value was 8%. In the Columbus Gas and Fuel case (17 Fed. 2nd 630) his honor Judge Hough added 10% for the going concern value, and there are many other cases wherein the amount ranges from 10 to 15%.

11. In general, I am of the opinion that the fair value of the property, both interstate and intrastate, for each year of the period is substantially in excess of its book cost, except toward the end of the period, when it approximates book cost.

12. By reducing the annual expense of depreciation below that actually set aside by the company for that purpose each year, the majority findings disregard all of the pertinent evidence in the case. The correctness of the company's rates of depreciation was not questioned. No witness testified that the Company's rates were too high or claimed that the reserve was excessive for any year. In point of fact, as of June 30, 1925, the amount in the reserve, $12,560,503, was less than enough to provide for the existing depreciation found by the Commission. For that year the percentage of reserve to plant was only 12.75%, and for each of the other years it was even less than that. If, for the period, the company had provided for its depreciation reserve at the 4% rate applied to the property value, by the majority findings, I am satisfied that the balance in the reserve for depreciation as of present time would be less than $5,000,000—an absurd amount, particularly in view of the size of the respondent's property.

13. In my opinion the reduction of the majority findings in the allowable license contract payments below those found to be proper by the Federal Court in the Chicago case is not justified, the evidence in that case and in the

present case on that issue being substantially the same, and the decision of that court being necessarily entitled to great weight.

14. I am unable to conclude that for any one of the years in controversy the rate of return on the fair value of the property under the rates collected has been excessive, unjust or unreasonable. On the contrary, in my opinion, on any reasonable basis of fair value of the property for the years, and after making proper adjustments in the revenues and expenses, the rates collected have provided only a reasonable return on the fair value of the property used and useful in the service and convenience of the public for the years in question.

In a recent case decided by the Supreme Court of the United States, January 6, 1930, United Railways *v.* West, 280 U. S. 234, the Court said:

> "• • • It is manifest that just compensation for a utility, requiring for efficient public service skillful and prudent management as well as use of the plant, and whose rates are subject to public regulation, is more than current interest on mere investment. Sound business management requires that after paying all expenses of operation, setting aside the necessary sums for depreciation, payment of interest and reasonable dividends, there should still remain something to be passed to the surplus account; and a rate of return which does not admit of that being done is not sufficient to assure confidence in the financial soundness of the utility to maintain its credit and enable it to raise money necessary for the proper discharge of its public duties. In this view of the matter, a return of 6.26 per cent is clearly inadequate. In the light of recent decisions of this court and other Federal decisions, it is not certain that rates securing a return of 7½ per cent or even 8 per cent on the value of the property would not be necessary to avoid confiscation. • • •"

In citing from the foregoing case, I do not necessarily advocate an 8% return as the fair rate of return for the

utility at the present time. The point here and the one I wish to emphasize is that for no part of the period in controversy in the present case have the majority findings allowed a return of even as much as 7½% on the property.

See also Section 614-46 of the General Code of Ohio which, in substance, provides:

> "If the Commission • • • shall be of the opinion that the rate • • •, so fixed by ordinance is or will be unjust or unreasonable, or insufficient to yield reasonable compensation for the service, the commission shall, with due regard to the value of all the property of the public utility, actually used and useful for the convenience of the public, excluding therefrom the value of any franchise or right to own • • • and exclusive of any value thereto by reason of a monopoly or merger *and to the necessity of making reservations from the income for surplus, depreciation and contingencies, and such other matters as may be proper, according to the fact in each case,* fix and determine the just and reasonable rate • • • collected by such public utility.

See Indiana Bell Telephone Co. *v.* Commission, 300 Fed. 190; Pac. Telephone & Telegraph Co. *v.* Whitcomb, 12 Fed. 2nd, 279; Northwestern Bell Telephone Co. *v.* Commission, 6 Fed. 2nd, 663.

15. In my opinion, the majority findings, in determining that a portion of the moneys represented by the rates collected by the Company under bond should be repaid, without having first accorded the Company an opportunity to offer separate evidence of property value, revenues and expenses and return for the exchanges with respect to which refunders are to be made, is illegal and contrary to the opinion of the attorney for the Commission recently rendered at the Commission's request. The telephone company has frequently insisted upon its right to offer such evidence and that right has been preserved to it in the record. This right has not been waived.

16. The confiscatory character of the majority findings is perhaps best shown by the fact that notwithstanding the

tentative value of the property as of June 30, 1925, was $104,282,735, and notwithstanding since that date the company has admittedly expended more than $160,000,000 for new property, the total present value of all of the property as of November 30, 1933, is now fixed in the majority findings at only $126,000,000. This would mean that as of November 30, 1933, the Company had retired all of the $104,282,735, plus $34,000,000 of the $160,000,000,—which is contrary to all of the evidence in the case.

To the foregoing grounds of dissent many others might be added, such, for example, as the disallowances of any amount for engineering on certain items of plant, the exclusion of other items of plant from the amount upon which the allowance for omissions is computed, etc., all contrary to the established practice of this Commission in previous telephone rate cases. Under the circumstances, however, it is unnecessary to comment on these items in detail, the other grounds hereinabove set forth being more than sufficient, in my judgment, to show that the majority findings do not comply with the decisions of the United States Supreme Court and other Federal Courts. See Bluefield, etc., *v.* P. U. C. of W. Va. 262 U. S. 679, and Southwestern Bell Telephone Company *v.* Ft. Smith, 294 Fed. 102 (Affd. 270 U. S. 627).

Conclusion.

I cannot, therefore, concur with my colleagues and their findings in this important case. To do so would require me to disregard the law and to find contrary to the evidence in the case and this I am unwilling to, and cannot, do.

Dated at Columbus, Ohio, this 16th day of January, 1934.

E. J. HOPPLE,
Chairman.

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City Solicitors and Directors of Law.

APPENDIX A

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

SUMMARY OF FINAL VALUATION AS OF JUNE 30, 1925

Line No.	Acct. No.	Description	Reproduction Value	Percent Condition	Present Value
1.	207	Right of way	$1,243,084	100.00	$1,243,084
2.	211	Land	3,256,854	100.00	3,256,854
3.	213	Buildings	7,788,774	90.18	7,023,924
4.		Total Land and Buildings	$11,045,628	Ave. 93.08	$10,280,778
5.	221	Central Office Telephone Equipment	17,199,740	85.75	14,748,777
6.	222	Other Equipment of Central Offices	634,689	84.72	537,709
7.		Total Central Office Equipment	$17,834,429	Ave. 85.71	$15,286,486
8.	231	Station Apparatus	5,759,956	85.68	4,935,066
9.	232	Station Installations	2,034,423	80.00	1,627,538
10.	233	Interior Block Wires	83,881	80.00	67,105
11.	234	Private Branch Exchanges	3,384,995	85.75	2,902,633
12.	235	Booths and Special Fittings	167,201	80.00	133,761
13.		Total Station Equipment	$11,430,456	Ave. 84.56	$9,666,123
14.	241	Exchange Pole Lines	9,412,432	72.98	6,864,844
15.	242	Exchange Aerial Cable	8,055,194	87.71	7,064,968
16.	243	Exchange Aerial Wire	4,556,220	76.72	3,495,368
17.	244	Exchange Underground Conduit	9,386,032	95.00	8,916,730
18.	245	Exchange Underground Cable	9,810,730	91.85	9,011,062
19.	246	Exchange Submarine Cable	19,730	95.00	18,744
20.		Total Exchange Lines	$41,240,338	Ave. 85.77	$35,371,706
21.	251	Toll Pole Lines	6,108,489	80.93	4,943,325
22.	252	Toll Aerial Cable	536,254	91.50	490,692
23.	253	Toll Aerial Wire	3,842,664	91.78	3,526,696
24.	254	Toll Underground Conduit	30,493	95.00	28,968
25.	255	Toll Underground Cable	421,257	91.64	386,062
26.	256	Toll Submarine Cable	12,652	95.00	12,019
27.		Total Toll Lines	$10,951,809	Ave. 85.72	$9,387,732
28.	261	Office Furniture and Fixtures	624,244	85.00	530,607
29.	263	General Store Equipment	18,181	85.00	15,454
30.	264	General Stable and Garage Equipment	652,381	75.00	489,248
31.	265	General Tools and Implements	422,051	70.00	295,436
32.		Total General Equipment	$1,716,807	Ave. 77.51	$1,330,745
33.		Total Physical Property	$95,462,501	Ave. 86.49	$82,566,604
		Undistributed Construction Expenditures:			
34.		Omissions 1%	814,370	Ave. 85.58	697,120
35.		Interest During Construction..... 6%	5,727,750	" 86.49	4,953,996
36.		Engineering 5%	3,243,948	" 85.67	2,779,056
37.		Taxes During Construction..... 1%	964,625	" 86.49	825,666
38.		General Expenses 2%	1,909,250	" 86.49	1,651,382
39.		Total Undistributed Construction Expenditures...	$12,650,143	Ave. 86.22	$10,907,170
40.		Total Fixed Capital	$108,112,644	Ave. 86.46	$93,473,774
41.		Working Capital Including Materials & Supplies....	2,948,502	100.00	2,948,502
42.		Total Property Used and Useful	$111,061,146	Ave. 86.62	$96,422,276
		Less,—			
43.		Interstate Proportion of Total.....2.81559%	3,126,949	" 86.62	2,714,788
44.		Intrastate Property Used and Useful...97.18441%	$107,934,197	Ave. 86.62	$93,707,488

APPENDIX B

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

VALUATION OF PROPERTY USED AND USEFUL FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE AND TRENDS OF SUCH VALUATION.

	June 30, 1925	Last 6 Mos. 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931	Year 1932	11 Mos. 1933
Fixed Capital										
All Items Except Right of Way and Restored Land Values—										
1. Final Valuation Fixed by Commission	$92,118,867									
2. Trended Value First of Period—Percent of Line 6	.....	100.00% A	98.73% B	98.97% C	99.20% D	101.45% E	96.65% F	98.95% G	88.71% H	102.96% I
3. Trended Value First of Period—Amount	.....	$92,118,867	$96,811,586	$100,642,148	$116,752,169	$129,566,976	$137,815,645	$142,205,570	$129,465,177	$130,562,050
4. Net Additions During Period—Per Books at 100%	.....	5,431,559	7,475,855	17,051,571	10,962,937	14,516,292	13,547,888	8,736,462	2,686,872*	1,254,329*
5. Trended Value End of Period	92,118,867 A	97,550,426 B	103,786,891 C	117,693,719 D	127,715,106 E	144,083,267 F	151,363,033 G	145,942,032 H	126,798,305 I	129,307,721
Right of Way:										
6. Book Value plus Undistr. Constr. Exp. End of Period—at 100%	1,354,907	1,421,549	1,418,728	1,420,376	1,500,857	1,579,461	1,712,919	1,743,117	1,752,806	1,754,696
Restored Land Values:										
7. Trended Value End of Period—Per Appendix "C"	.....	2,430	86,570	484,401	521,174	665,999	644,051	806,085	586,771	556,172
8. Total Fixed Capital End of Period	$93,473,774	$98,974,405	$105,242,189	$119,598,496	$129,737,137	$146,328,727	$153,720,003	$148,290,234	$129,118,882	$131,608,588
	6-30-25		6-30-26	6-30-27	6-30-28	6-30-29	6-30-30	6-30-31	6-30-32	6-30-33
Average Fixed Capital:										
9. Based Upon Line 8, First and End of Period	96,473,774		102,106,297	112,420,342	124,667,816	138,032,932	150,024,365	151,005,118	138,704,308	130,363,485
Working Capital Including Materials and Supplies										
10. Average Per Appendix "E"	2,948,502		2,923,563	3,052,701	3,218,291	3,451,024	3,250,138	2,804,990	2,427,696	3,044,894
Total Property Used and Useful										
11. Total Lines 9 and 10	96,422,276		105,081,860	115,473,043	127,886,107	141,483,956	153,274,503	153,810,108	141,202,004	133,408,379
Less—										
12. Interstate Proportion of Total	2,714,788		3,264,086	4,436,521	5,468,873	6,718,880	7,591,456	8,538,445	7,576,849	7,158,173
13. Intrastate Property Used and Useful	$93,707,488		$101,767,774	$111,036,522	$122,417,735	$134,765,576	$145,683,047	$145,271,663	$133,625,655	$126,250,206

NOTE—The composite percentages shown on Line 2 were developed by the Commission's Engineers and represent the relation of values for each current period to the preceeding period and they have been applied to the basic figures bearing corresponding alphabetical designations.

The total property used and useful shown on Lines 11 to 13 inclusive is forwarded to the rate study on Appendix "M". Interstate and Intrastate Allocations have been made on the basis of percentages shown on Appendix "L".

Line 6 includes undistributed construction expenditures at 6-30-25 added to book figures in all columns as follows: 6% interest during construction, $74,582—Taxes during construction, $12,430—General expenses, $24,861—Total, $111,873. There is also included a book deduction covering re-classification during the 11 months of 1933 in the amount of $3,580.

*Indicates red figures.

APPENDIX C

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

RESTORATION OF LAND VALUES FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE AND TRENDS OF SUCH VALUES.

	June 30, 1925	Last 6 Mos. 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931	Year 1932	11 Mos. 1933
Restoration Due to Becoming Useful										
Land Values Disallowed as Not Used and Useful:										
1. At 6-30-25—Trended Value—Percent of Line 2		100.00% A	98.73% B	98.97% C	99.20% D	101.45% E	95.65% F	98.96% G	98.71% H	102.96% I
2. Trended Value—Amount	$686,613 A	$686,613 B	$677,893 C	$667,858 D	$653,084 E	$661,649 F	$632,772 G	$594,489 H	$527,871 I	$543,961
Periods During Which Disallowed Land Values Continued to Be Not Used and Useful:										
3. Parcel No. 17—Columbus, to July, 1925	2,430	.....	.....	.....	.....	.....	.....	.....	.....	.....
4. " " 21—Cleveland, to June, 1926	84,609 A	84,609	.....	.....	.....	.....	.....	.....	.....	.....
5. " " 8—Toledo, to April, 1927	159,280 A	159,280 B	157,237	.....	.....	.....	.....	.....	.....	.....
6. " " 19—Cleveland, to May, 1927	309,664 A	309,664 B	305,731	.....	.....	.....	.....	.....	.....	.....
7. " " 18—Columbus, to February, 1928	20,200 A	20,200 B	20,042 C	19,436	.....	.....	.....	.....	.....	.....
8. " " 1—Springfield, to October, 1928	22,500 A	22,500 B	22,214 C	21,541	.....	.....	.....	.....	.....	.....
9. " " 17—Cleveland, to December, 1929	55,200 A	54,200 B	54,499 C	52,848 D	52,425	.....	.....	.....	.....	.....
10. " " 3—Dayton, to Date	72,500 A	72,500 B	71,579 C	69,410 D	68,856 E	69,858 F	68,814 G	63,772 H	55,535 I	57,333
11. " " 9—Toledo, to Date	7,000 A	7,000 B	6,911 C	6,702 D	6,648 E	6,744 F	6,451 G	6,081 H	5,377 I	5,536
12. " " 1—Coshocton, to Date	3,150 A	3,150 B	3,110 C	3,016 D	2,993 E	3,035 F	2,903 G	2,727 H	2,419 I	2,491
13. Total Trended Values During Periods of Non-Use	$686,613	$684,183	$641,323	$172,952	$180,990	$79,632	$76,168	$71,580	$63,451	$65,360
14. Total Restoration Due to Becoming Useful (3-13)	.....	2,430	36,570	484,401	621,174	581,917	556,804	522,929	463,890	477,951
Restoration Due to Reduction of Book Net Additions										
15. Parcel No. 3—Dayton, Cr. Net Add'ns in June, 1929	.....	.....	.....	.....	.....	84,982 F	89,434 G	76,558 H	67,028 I	69,013
16. Parcel No. 9—Toledo, Cr. Net Add'ns in Sept., 1930	.....	.....	.....	.....	.....	.....	7,888 G	6,586 H	5,653 I	6,029
17. Parcel No. 1—Coshocton, Cr. Net Add'ns in Jan., 1933	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,513
18. Total Restoration Due to Reduction of Net Add'ns	.....	.....	.....	.....	.....	$84,982	$97,447	$82,156	$72,681	$78,551
19. Total Restored Land Values (Line 14 plus Line 18)	.....	$2,430	$36,570	$484,401	$621,174	$666,899	$644,051	$605,085	$536,771	$556,172

NOTE—The composite percentages shown on Line 1 were developed by the Commission's Engineers and represent the relation of values for each current period to the preceeding period and they have been applied to the basic figures bearing corresponding alphabetical designations.
The totals on Line 19 are forwarded to Appendix "B", Line 7.

APPENDIX D

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

UNDISTRIBUTED CONSTRUCTION EXPENDITURES AS OF JUNE 30, 1925

Basic Figures as of 6-30-25		Reproduction Value	Present Value
1. Total physical property per Appendix "A" Line 33		$95,462,501	$82,566,604
Less:			
2. Right of way	Acct. 207	1,243,034	1,243,034
3. Land	Acct. 211	3,256,854	3,256,854
4. Buildings	Acct. 212	7,788,774	7,023,924
5. General Equipment	Acct. 261-265	1,716,807	1,330,745
6. Total		$14,005,469	$12,854,557
7. Balance physical property		$81,457,032	$69,712,047
Less:			
Estimated material values of W. E. Co. installed switchboards:			
8. Central Office telephone equipment	Acct. 221	$11,422,613	$9,794,891
9. Other equipment of Central Offices	Acct. 222	118,524	100,414
10. Private branch exchanges	Acct. 234	875,665	750,889
Estimated material value of wire:			
11. Interior block wires	Acct. 233	40,928	32,742
12. Exchange aerial wire	Acct. 243	2,188,925	1,679,343
13. Toll aerial wire	Acct. 253	1,931,413	1,772,651
14. Total		$16,578,068	$14,130,924
15. Balance physical property		$64,878,964	$55,581,123
Undistributed Construction Expenditures as of 6-30-25			
16. Omissions ..... 1% of Line 7		$814,570	$697,120
17. Interest during construction ..... 6% of Line 1		5,727,750	4,963,996
18. Engineering ..... 5% of Line 15		3,243,948	2,779,056
19. Taxes during construction ..... 1% of Line 1		964,625	825,666
20. General expenses ..... 2% of Line 1		1,909,250	1,651,332
21. Total		$12,650,143	$10,907,170

APPENDIX E

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3387

WORKING CAPITAL INCLUDING MATERIALS AND SUPPLIES FOR EACH YEAR FROM 1925 TO 1933 BOTH INCLUSIVE

	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931	Year 1932	11 Mos. 1933
Working Capital—									
Average Expenses for One Month:									
1. Current Maintenance Expenses	$395,363	$437,474	$464,435	$509,929	$634,729	$636,599	$609,012	$540,520	$467,681
2. Traffic Expenses	626,387	672,885	709,133	707,987	775,718	709,413	596,288	459,793	332,807
3. Commercial Expenses	191,611	207,937	229,397	251,889	286,423	293,008	302,988	287,621	207,195
4. General & Miscellaneous Expenses	81,344	81,306	98,240	152,924	174,759	162,498	160,584	142,328	163,354
5. Taxes Assignable to Operations	215,914	248,758	279,002	309,250	310,378	345,605	339,484	340,681	353,100
6. Rent Deductions	47,547	49,417	48,538	45,585	61,133	73,209	59,631	46,474	37,958
7. Total Expenses for One Month	$1,558,166	$1,697,777	$1,828,745	$1,977,564	$2,243,140	$2,220,332	$2,067,987	$1,817,397	$1,562,095
Materials and Supplies—									
Average Book Inventory:									
8. Balance First of Period	See	1,403,783	1,047,788	1,400,125	1,081,329	1,334,439	725,172	748,834	611,764
9. Balance End of Period	Note	1,047,788	1,400,125	1,081,329	1,334,439	725,172	748,834	611,764	2,353,834
10. Average for Each Period	1,390,336	1,225,786	1,223,956	1,240,727	1,207,884	1,029,806	737,003	680,299	1,482,799
11. Total Working Capital Including Materials and Supplies, (Line 7 plus Line 10)	$2,948,502	$2,923,563	$3,052,701	$3,218,291	$3,451,024	$3,250,138	$2,804,990	$2,497,696	$3,044,894

NOTE—Actual materials and supplies at June 30, 1925, per books used for 1925; average based upon balances at first and end of each period used for other years. The totals on Line 11 are forwarded to Appendix "B", Line 10.

APPENDIX F

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

REVENUES, EXPENSES AND NET INCOME FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE.

	Year 1925			Year 1926		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues						
1. Exchange Service Revenues	$28,554,399	$273,896	$24,280,503	$26,629,407	$304,793	$26,323,614
2. Toll Service Revenues	5,966,066	670,341	5,296,715	6,832,179	777,908	6,054,271
3. Miscellaneous Operating Revenues	720,598	31,660	688,938	744,883	40,471	704,412
4. Total	$31,241,063	$975,897	$30,265,156	$34,206,469	$1,123,172	$33,082,297
5. Less, Licensee Revenue—Dr.	520,077	14,862	505,215	574,557	17,467	557,090
6. Telephone Operating Revenues	$30,720,976	$961,035	$29,759,941	$33,630,912	$1,105,705	$32,525,207
7. Net Non-Operating Revenues	120,234	19,970	100,264	132,783	36,631	96,152
8. Total Revenues	$30,841,210	$981,005	$29,860,205	$33,763,695	$1,142,336	$32,621,359
Expenses and Deductions						
9. Current Maintenance Expenses	$4,744,887	$116,558	$4,627,799	$5,249,688	$145,818	$5,104,870
10. Depreciation of Tel. Plant and Equipment	3,378,236	98,819	3,279,417	3,726,384	110,762	3,615,622
11. Traffic Expenses	7,516,642	269,016	7,247,626	8,074,616	314,858	7,759,758
12. Commercial Expenses	2,299,331	72,018	2,227,313	2,486,252	81,956	2,413,294
13. General and Miscellaneous Expenses	976,134	28,893	947,241	975,872	31,906	943,787
14. Uncollectible Operating Revenues	68,155	2,692	65,462	163,410	5,376	158,034
15. Taxes Assignable to Operations	2,590,970	70,691	2,520,279	2,965,097	85,414	2,899,683
16. Rent Deductions	570,563	27,667	542,896	592,005	31,291	561,614
17. Western Electric Co. Excess Profits—Cr.						
18. Total Expenses and Deductions	$22,159,898	$681,354	$21,478,084	$24,283,124	$806,992	$23,456,132
Net Income						
19. Line 8 less Line 18	$8,681,822	$299,651	$8,382,171	$9,560,571	$335,344	$9,185,227

	Year 1930			Year 1931		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues						
20. Exchange Service Revenues	$34,422,892	$446,089	$33,976,803	$33,722,537	$457,974	$33,265,563
21. Toll Service Revenues	8,949,066	1,172,602	7,776,464	8,185,853	1,140,278	7,053,805
22. Miscellaneous Operating Revenues	1,531,087	402,561	1,128,476	1,532,459	486,288	1,046,171
23. Total	$44,902,995	$2,021,252	$42,881,743	$43,437,879	$2,083,540	$41,354,339
24. Less, Licensee Revenue—Dr.	532,488	18,619	514,869	521,964	19,853	501,231
25. Telephone Operating Revenues	$44,369,507	$2,002,633	$42,366,874	$42,916,795	$2,063,787	$40,853,008
26. Net Non-Operating Revenues	38,432		38,432	31,982		31,982
27. Total Revenues	$44,407,939	$2,002,633	$42,405,306	$42,948,777	$2,063,787	$40,884,990
Expenses and Deductions						
28. Current Maintenance Expenses	$7,689,184	$239,585	$7,399,599	$7,306,142	$228,781	$7,079,361
29. Depreciation of Tel. Plant and Equipment	5,735,502	246,941	5,488,561	6,099,342	294,144	5,805,198
30. Traffic Expenses	8,512,964	437,210	8,065,744	7,155,461	387,334	6,768,127
31. Commercial Expenses	3,516,099	160,181	3,355,918	3,653,855	184,545	3,471,310
32. General and Miscellaneous Expenses	1,949,976	89,909	1,860,067	1,927,010	95,104	1,831,910
33. Uncollectible Operating Revenues	589,533	24,400	515,133	475,443	22,869	452,574
34. Taxes Assignable to Operations	4,147,264	181,122	3,966,122	4,073,807	208,029	3,865,778
35. Rent Deductions	678,504	74,004	604,500	715,589	59,161	656,428
36. Western Electric Co. Excess Profits—Cr.	23,908*	678*	23,230*	154,254*	6,254*	148,000*
37. Total Expenses and Deductions	$33,896,108	$1,441,889	$31,454,219	$31,236,845	$1,453,773	29,783,072
Net Income						
38. Line 27, less Line 37	$11,511,831	$560,744	$10,951,087	$11,712,432	$610,014	$11,101,418

APPENDIX F

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

REVENUES, EXPENSES AND NET INCOME FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE—Concluded.

	Year 1927			Year 1928			Year 1929		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues									
1. Exchange Service Revenues	$28,617,757	$343,804	$28,269,963	$30,447,907	$372,260	$30,075,647	$33,431,682	$444,903	$32,986,779
2. Toll Service Revenues	7,307,442	891,713	6,415,729	8,316,646	1,017,569	7,299,077	9,446,102	1,264,290	8,281,812
3. Miscellaneous Operating Revenues	872,319	36,338	835,981	926,831	43,308	883,518	1,506,401	462,325	1,043,076
4. Total	$36,797,518	$1,276,445	$35,521,073	$39,691,374	$1,433,132	$38,258,242	$44,383,185	$2,151,518	$42,231,667
5. Less, Licensee Revenue—Dr.	636,405	20,556	615,849	420,895	14,189	406,709	443,601	16,546	427,055
6. Telephone Operating Revenues	$36,161,113	$1,255,889	$34,905,224	$39,270,479	$1,418,943	$37,851,533	$43,939,584	$2,134,972	$41,804,612
7. Net Non-Operating Revenues	290,329	194,167	96,162	370,838	213,726	157,112	45,127	.....	45,127
8. Total Revenues	$36,451,442	$1,450,056	$35,001,386	$39,641,314	$1,632,669	$38,008,645	$43,984,711	$2,134,973	$41,849,739
Expenses and Deductions									
9. Current Maintenance Expenses	$5,573,216	$175,217	$5,397,999	$6,119,143	$201,538	$5,917,605	$7,618,749	$265,510	$7,351,239
10. Depreciation of Tel. Plant and Equipment	4,208,774	145,845	4,062,929	4,728,613	179,011	4,549,602	5,186,438	222,616	4,963,810
11. Traffic Expenses	8,509,593	365,951	8,143,982	8,496,841	379,891	8,116,950	9,308,618	464,298	8,844,320
12. Commercial Expenses	2,755,760	101,067	2,651,693	3,022,674	121,968	2,900,738	3,437,074	165,288	3,271,686
13. General and Miscellaneous Expenses	1,178,986	45,151	1,133,735	1,835,084	76,818	1,758,766	2,097,101	96,048	2,001,053
14. Uncollectible Operating Revenues	158,708	5,523	153,185	212,916	7,677	205,239	312,751	15,168	297,583
15. Taxes Assignable to Operations	3,848,025	118,133	3,729,892	3,710,996	145,702	3,565,294	3,734,540	168,127	3,566,413
16. Rent Deductions	512,460	38,606	473,854	547,026	46,116	500,909	733,596	66,896	666,699
17. Western Electric Co. Excess Profits—Cr.	.....	.....	.....	.....	.....	.....	.....	.....	.....
18. Total Expenses and Deductions	$26,237,422	$996,303	$25,242,719	$28,672,292	$1,158,189	$27,514,103	$32,416,855	$1,464,053	$30,952,802
Net Income									
19. Line 8 less Line 18	$10,214,020	$454,653	$9,759,167	$10,969,022	$474,480	$10,494,542	$11,567,856	$670,919	$10,896,937

	Year 1930			Year 1933		
	Total	Interstate	Intrastate	Total	Interstate	Intrastate
Revenues						
20. Exchange Service Revenues	$30,088,221	$345,290	$29,698,081	$25,929,298	$298,057	$25,631,241
21. Toll Service Revenues	6,849,190	787,309	5,561,881	5,530,326	680,483	4,949,893
22. Miscellaneous Operating Revenues	1,403,906	445,839	958,067	1,375,411	436,790	938,621
23. Total	$37,791,417	$1,558,438	$36,282,979	$32,985,035	$1,415,280	$31,519,755
24. Less, Licensee Revenue—Dr.	521,084	14,590	506,494	466,923	13,074	453,849
25. Telephone Operating Revenues	$37,270,333	$1,543,848	$35,726,485	$32,468,112	$1,402,206	$31,065,906
26. Net Non-Operating Revenues	18,843	.....	18,843	.....	.....	.....
27. Total Revenues	$37,289,176	$1,543,848	$35,745,328	$32,468,112	1,402,206	31,065,906
Expenses and Deductions						
28. Current Maintenance Expenses	$6,486,243	178,563	6,307,680	$5,612,177	$154,501	$5,457,676
29. Depreciation of Tel. Plant and Equipment	6,134,880	276,879	5,858,001	6,078,457	274,333	5,804,124
30. Traffic Expenses	5,517,517	268,041	5,249,476	3,988,681	194,013	3,799,668
31. Commercial Expenses	3,451,455	111,876	3,339,579	2,486,337	80,592	2,405,745
32. General and Miscellaneous Expenses	1,707,984	76,857	1,631,077	1,960,247	88,211	1,872,036
33. Uncollectible Operating Revenues	810,357	33,549	776,818	296,731	12,284	284,437
34. Taxes Assignable to Operations	4,087,983	181,414	3,906,519	4,237,201	188,088	4,049,163
35. Rent Deductions	567,683	36,529	531,154	455,498	21,666	433,825
36. Western Electric Co Excess Profits—Cr.	117,028*	4,306*	112,722*	.....	.....	.....
37. Total Expenses and Deductions	$28,636,984	$1,149,402	$27,487,582	$25,120,314	$1,013,640	$24,106,674
Net Income						
38. Line 27, less Line 37	$8,652,192	$394,446	$8,257,746	$7,347,798	$388,566	$6,959,232

NOTE—Licensee Revenue—Dr. shown on lines 5 and 24 is analyzed on Appendix "G".

Depreciation of telephone plant and equipment shown on lines 10 and 29 is analyzed on Appendix "K".

Interstate and Intrastate allocations have been made on the basis of percentages shown on Appendix "L".

Amounts for the year 1933 are estimated on the basis of eleven months' operations to 11-30-33.

The net income shown on lines 19 and 38 is forwarded to the rate study on Appendix "M".

* Indicates red figures.

APPENDIX G

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

COST OF A. T. & T. COMPANY LICENSE CONTRACT SERVICES ALLOWED AS A DEDUCTION FROM REVENUES UNDER ACCT. 527—LICENSEE REVENUE—DR.—FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE

Costs Allowed	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929
1. A. T. & T. Co. departmental expenses—Appenix "H"	$308,536	$332,039	$381,589	$419,986	$442,627
2. Office space and furniture expense	3,157	731	837	912	974
3. Instrument maintenance	61,291	81,311	86,754	.....	.....
4. Instrument depreciation	51,793	56,506	58,882	.....	.....
5. Return on instruments	95,300	103,970	108,343	.....	.....
6. Total costs allowed	$520,077	$574,557	$636,405	$420,898	$443,601
Payments Made					
7. Licensee Revenue—Dr.—(Acct. 527) per books	1,274,052	1,277,944	1,402,144	752,524	626,184
Expense Allowed					
8. Line 6 or 7, whichever is lower	520,077	574,557	636,405	420,898	443,601

Costs Allowed	Year 1930	Year 1931	Year 1932	Year 1933
9. A. T. & T. Co. departmental expenses—Appendix "H"	$532,473	$520,006	See Note	
10. Office space and furniture expense	1,015	1,078		
11. Instrument maintenance	.....	.....		
12. Instrument depreciation	.....	.....		
13. Return on instruments	.....	.....		
14. Total costs allowed	$533,488	$521,084	$521,084	$521,084
Payments Made				
15. Licensee Revenue—Dr.—(Acct. 527) per books	638,043	619,171	545,067	466,923
Expense Allowed				
16. Line 14 or 15, whichever is lower	533,488	521,084	521,084	466,923

NOTE: As there is no evidence in the record concerning costs for 1932 and 1933, they have been estimated at the same amount as for 1931.

Payments made of Licensee Revenue—Dr.—for 1933 have been estimated on the basis of payments for the eleven months ended November 30, 1933.

The amounts on lines 8 and 16 are forwarded to Exhibit "F", lines 5 and 24.

APPENDIX H

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

A. T. & T. Company Departmental Expenses Allowed and Disallowed as Part of Cost of License Contract Services for Each Year from 1925 to 1931, Both Inclusive.

	Dept. No.	Proportion	Reference to Record	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931
Departmental Expenses Allowed										
1. Operation and Engineering	No. 1	Entire	A-108-B	$121,300	$131,722	$141,563	$154,161	$168,039	$176,470	$164,528
2. Development and Research	No. 2	Partial	A-117-B	100,387	108,968	131,464	147,267	160,696	230,916	235,932
3. Information	No. 3	None	A-124-B							
4. Personnel	No. 4	Partial	A-150 & 151-B	14,824	17,526	28,572	30,782	34,845	35,291	33,886
5. Public Relations	No. 5	None	A-153-B							
6. Treasurer	No. 6	Partial	A-154-B	606	680	1,214	958	1,119	1,281	1,260
7. Comptroller	No. 7	Partial	A-155-B	22,752	24,620	26,088	27,202	29,315	30,626	30,505
8. Secretary	No. 8	None	A-156-B							
9. Administrative Including Sundry	No. 9	One-half	A-157-B	14,361	14,106	16,336	14,586	15,558	14,384	12,923
10. General Service Bureau	No. 10	One-half	A-158-B	7,023	8,063	8,277	8,890	9,833	10,443	9,535
11. Operation—General	No. 11	None	A-159-B							
12. Legal	No. 12	Entire	A-160-B	27,283	26,354	28,075	36,140	23,222	33,062	31,437
13. Total Allowed			A-170-B, Line A	$308,536	$332,039	$381,589	$419,986	$442,627	$532,473	$520,006
Departmental Expenses Disallowed										
14. Operation and Engineering	No. 1	None	A-108-B							
15. Development and Research	No. 2	Partial	A-117-B	39,613	56,032	75,536	69,733	109,304	149,984	102,068
16. Information	No. 3	Entire	A-124-B	31,184	35,103	31,514	41,441	55,377	54,324	52,365
17. Personnel	No. 4	Partial	A-150 & 151-B	9,120	9,853	7,776	6,196	6,778	6,845	5,674
18. Public Relations	No. 5	Entire	A-153-B	1,129	1,086	1,086	1,120	1,444	1,932	1,483
19. Treasurer	No. 6	Partial	A-154-B	35,525	50,871	39,768	61,266	59,818	91,774	58,949
20. Comptroller	No. 7	Partial	A-155-B	22,721	24,647	26,936	29,436	31,332	33,508	31,810
21. Secretary	No. 8	Entire	A-156-B	2,389	2,453	2,348	2,571	2,639	2,527	2,038
22. Administrative Including Sundry	No. 9	One-half	A-157-B	14,361	14,106	16,335	14,585	15,559	14,385	12,922
23. General Service Bureau	No. 10	One-half	A-158-B	7,023	8,063	8,278	8,890	9,832	10,443	9,535
24. Operation—General	No. 11	Entire	A-159-B	8,694	9,682	9,349	10,113	10,857	11,147	10,071
25. Legal	No. 12	None	A-160-B							
26. Total Disallowed			A-170-B, Line A	$171,759	$211,896	$218,926	$245,351	$302,940	$375,969	$286,915
Total Departmental Expenses										
27. As Shown on Appendix "J", Line 26				$480,295	$543,935	$600,515	$665,337	$745,567	$908,442	$806,921
Note—The amounts on line 13 are forwarded to Appendix "G", lines 1 & 9. The partial amounts allowed on line 7 cover the following items:										
Comptroller—Dept. No. 7—										
Bell System Methods			A-155-B	$9,473	$10,437	$11,215	$11,412	$12,381	$13,022	$12,595
Chief Traveling Auditor			A-155-B	7,397	7,492	7,688	8,355	8,735	8,928	9,283
Chief Accountant			A-155-B	1,341	1,451	1,681	1,669	2,097	2,214	2,107
Proportion of Undistributed			A-155-B	3,735	4,476	4,623	4,778	5,162	5,511	5,509
Proportion of Administration			A-155-B	806	764	881	988	940	951	1,011
Total Allowed—Line 7				$22,752	$24,620	$26,088	$27,202	$29,315	$30,626	$30,505

The partial amounts disallowed on lines 15, 17, 19 and 20 are detailed on Appendix "I".

APPENDIX I

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

DETAILS OF PARTIAL AMOUNTS OF A. T. & T. COMPANY DEPARTMENTAL EXPENSES DISALLOWED FOR EACH YEAR FROM 1925 TO 1931, BOTH INCLUSIVE.

	Reference To Record	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931
Development and Research—Dept. No. 2								
Picture Transmission	A-118-B	.....	$5,989	$5,911	$4,188	$3,458	$4,321	$7,406
Television	A-118-B	.....	1,324	10,067	3,339	5,519	3,717	3,270
Radio and Subm. Cable Tele. Conn. Eq. & Ccts.	A-118-B	.....	.....	.....	.....	.....	14,961	11,339
Radio Transmission Systems	A-118-B	30,397	35,252	43,571	44,529	66,611	83,203	46,424
Vacuum Tubes	A-118-B	9,216	12,389	11,469	12,812	11,206	14,333	14,903
Photo Electric Cells	A-118-B	.....	1,078	620	1,222	1,415	1,251	2,920
Submarine Cable	A-118-B	.....	.....	3,898	3,643	21,095	27,298	15,804
Total Disallowed—Appendix "H" Line 15		$39,613	$56,032	$75,536	$69,733	$109,304	$149,084	$102,068
Personnel—Dept. No. 4								
Special Training	A-150-B	2,746	2,934	2,393	2,605	2,888	2,885	2,276
"Other" Items Shown in Col. 4	A-150-B	1,419	1,619	1,504	1,591	1,740	1,652	1,224
Public Relations	A-150-B	599	611	610	636	703	683	638
"Other" Items Shown in Col. 4	A-151-B	748	1,071	1,206	1,364	1,447	1,625	1,536
Interest on Empl. Benefit Fund	Heiss No. 10 Supl.	3,608	3,618	2,063	.....	.....	.....	.....
Total Disallowed—Appendix "H" Line 17		$9,120	$9,853	$7,776	$6,196	$6,778	$6,845	$5,674
Treasurer—Dept. No. 6								
Direct Distribution of Securities	Ill. N. R. 861	2,133	16,587	2,993	22,201	15,478	36,456	5,033
Servicing Securities	Ill. N. R. 864	28,868	29,489	29,671	31,548	36,976	41,903	40,169
Handling Funds and Making Advances	Ill. N. R. 863	2,483	2,506	3,133	3,285	3,617	4,111	4,274
Financing General Department	Ill. N. R. 862	1,616	1,631	2,039	2,137	2,354	2,675	2,782
Handling Employees' Stock Plan	Ill. N. R. 862	425	658	1,932	2,095	1,393	6,629	6,691
Total Disallowed—Appendix "H" Line 19		$35,525	$50,871	$39,768	$61,266	$59,818	$91,774	$58,949
Comptroller—Dept. No. 7								
General Books and Records	A-155-B	4,942	5,367	5,957	6,432	7,100	7,926	7,850
Chief Statistician	A-155-B	10,205	11,032	12,207	13,455	14,353	15,090	14,242
Bell System Reports	A-155-B	3,033	3,001	3,088	3,311	3,358	3,421	2,918
Proportion of Undistributed	A-155-B	3,735	4,481	4,774	5,169	5,516	6,031	5,745
Proportion of Administration	A-155-B	806	766	910	1,069	1,006	1,040	1,055
Total Disallowed—Appendix "H" Line 20		$22,721	$24,647	$26,936	$29,436	$31,332	$33,508	$31,810

APPENDIX J

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

TOTAL A. T. & T. COMPANY DEPARTMENTAL EXPENSES AND FAIR PROPORTION THEREOF ALLOCABLE TO THE OHIO BELL TELEPHONE COMPANY AS SHOWN ON PAGE 223 OF COMPANY'S BRIEF FOR EACH YEAR FROM 1925 TO 1931, BOTH INCLUSIVE, AS CLAIMED BY COMPANY

	Dept. No.	Reference to Record	Year 1925	Year 1926	Year 1927	Year 1928	Year 1929	Year 1930	Year 1931
Total Departmental Expenses		A-103 & 170-B	$2,963,159	$3,301,306	$3,562,940	$3,813,983	$4,102,105	$4,340,568	$4,234,967
1. Operation and Engineering	No. 1	A-117-B	3,402,573	4,130,418	5,182,815	5,289,081	6,738,114	9,260,867	8,655,309
2. Development and Research	No. 2	A-124-B	738,027	854,747	786,989	1,031,629	1,344,765	1,349,439	1,305,136
3. Information	No. 3	A-150 & 151-B	603,523	707,960	938,415	924,418	1,056,306	1,100,273	1,080,695
4. Personnel	No. 4	A-153-B	26,252	25,860	25,850	26,038	32,987	45,405	35,317
5. Public Relations	No. 5	A-154-B	888,219	1,298,847	1,096,942	1,549,332	1,495,599	2,349,694	1,553,145
6. Treasurer	No. 6	A-155-B	1,117,884	1,241,284	1,341,620	1,410,248	1,488,481	1,619,429	1,607,471
7. Comptroller	No. 7	A-156-B	59,725	62,817	60,452	65,040	65,881	64,965	53,526
8. Secretary	No. 8	A-157-B	706,094	710,799	826,665	726,324	763,731	726,445	666,682
9. Administrative, incl. Sundry	No. 9	A-158-B	345,309	406,307	418,879	442,702	482,643	527,394	491,918
10. General Service Bureau	No. 10	A-159-B	211,565	240,549	233,029	254,250	268,793	277,792	273,631
11. Operation—General	No. 11	A-160-B	668,165	659,735	720,319	936,315	591,505	861,264	817,142
12. Legal	No. 12								
13. Total			$11,730,495	$13,640,629	$15,134,915	$16,469,360	$18,430,910	$22,523,535	$20,774,941
Allocable to the Ohio Bell Tel. Co.		A-108-B	$121,300	$131,722	$141,563	$154,161	$168,039	$176,470	$164,528*
14. Operation and Engineering	No. 1	A-117-B	140,000	165,000	207,000	217,000	270,000	380,000	338,000
15. Development and Research	No. 2	A-124-B	31,184	35,103	31,514	41,441	55,377	54,324	52,365
16. Information	No. 3	A-150 & 151-B	23,944	27,379	36,348	36,978	41,623	42,136	39,560
17. Personnel	No. 4	A-153-B	1,129	1,086	1,086	1,120	1,444	1,932	1,483
18. Public Relations	No. 5	A-154-B	36,131	51,551	40,982	62,224	60,937	93,055	60,209
19. Treasurer	No. 6	A-155-B	45,473	49,267	53,024	56,638	60,647	64,134	62,315
20. Comptroller	No. 7	A-156-B	2,389	2,453	2,348	2,571	2,639	2,527	2,088
21. Secretary	No. 8	A-157-B	28,722	28,212	32,671	29,171	31,117	28,769	25,845
22. Administrative, incl. Sundry	No. 9	A-158-B	14,046	16,126	16,555	17,780	19,665	20,886	19,070
23. General Service Bureau	No. 10	A-159-B	8,694	9,682	9,349	10,113	10,857	11,147	10,071
24. Operation—General	No. 11	A-160-B	27,383	26,354	28,075	36,140	23,222	33,062	31,437
25. Legal	No. 12								
26. Total			$480,295	$543,935	$600,515	$665,337	$745,567	$908,442	$806,921*

NOTE—The portions of lines 14 to 26, inclusive, which are allowed and disallowed are shown on Appendix "H".
*$10,000.00 added to correct error in figures shown in Company's brief.

APPENDIX K

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3367

DEPRECIATION EXPENSE ALLOWED ON DEPRECIABLE FIXED CAPITAL FOR EACH YEAR FROM 1925 TO 1933 BOTH INCLUSIVE

	June 30, 1925	Last 6 Mos. 1925	Year 1926	Year 1927	Year 1928
Total Fixed Capital—					
1. Final Present Value Fixed by Commission—Appendix "A"	$93,473,774	.....	.....	.....	.....
2. Net Additions During Period—Per Books	.....	$5,498,201	$7,472,534	$17,053,219	$11,043,418
Non-Depreciable Fixed Capital—					
3. Right of Way	1,243,064	66,642	2,831*	1,648	80,481
4. Land	3,256,854	69,276	11,111	163,237	765,893
5. Station Installations	1,627,538	69,908	197,122	349,079	281,111
6. Interior Block Wires	67,105	345	789	8,966	8,383
7. Drop Wires	1,232,185	.....	Not Available from Record		.....
8. General Store Equipment	15,454	825	1,712	2,525	2,825
9. General Stable and Garage Equipment	489,248	99,494	81,398	64,726	129,175
10. General Tools and Implements	295,436	33,818	157,394*	34,153	62,495
11. Undistributed Construction Expenditures	916,026	.....	Not Available from Record		.....
12. Total Non-Depreciable Property	9,142,880	339,[illegible]38	131,917	524,394	1,330,363
Depreciable Fixed Capital—					
13. Net Additions During Period—Line 2 less Line 12	.....	5,15[illegible],[illegible]63	7,340,617	16,528,885	9,713,056
14. Balance First of Period—From Line 15	.....	84,330,894	89,489,287	96,829,904	113,358,789
15. Balance End of Period—Line 13 plus Line 14	84,330,894	89,489,287	96,829,904	113,358,789	123,071,845
16. Average During Period Based Upon Lines 14 and 15	84,330,894	.....	93,159,596	105,094,347	118,215,317
Depreciation Expense—	(Year 1925)				
17. At 4% of Line 16	3,373,236	.....	3,726,384	4,203,774	4,728,613

	Year 1929	Year 1930	Year 1931	Year 1932	Year 1933
Total Fixed Capital—					
18. Final Present Value Fixed by Commission—Appendix "A"	.....	.....	.....	.....	.....
19. Net Additions During Period—Per Books	14,594,896	13,680,846	3,766,660	2,626,683*	1,286,070*
Non-Depreciable Fixed Capital—					
20. Right of Way	78,604	133,458	30,198	39,689	31,741*
21. Land	768,559	561,745*	39,578*	49,461*	61,222
22. Station Installations	353,710	71,532	29,331	296,308*	527,558*
23. Interior Block Wires	8,013	7,182	7,770	1,049*	
24. Drop Wires	.....	Not Available from Record		.....	.....
25. General Store Equipment	4,083	6,996*	1,911*	955*	105,785*
26. General Stable and Garage Equipment	102,866	142,528*	121,464*	141,094*	
27. General Tools and Implements	101,475	96,292*	53,468*	38,600*	
28. Undistributed Construction Expenditures	.....	Not Available from Record			.....
29. Total Non-Depreciable Property	1,417,310	595,886*	149,123*	487,778*	603,857*
Depreciable Fixed Capital—					
30. Net Additions During Period—Line 19 less Line 29	13,177,586	14,276,232	3,915,783	2,138,905*	682,213*
31. Balance First of Period—From Line 32	123,071,845	136,249,431	150,525,663	154,441,445	153,302,540
32. Balance End of Period—Line 30 plus Line 31	136,249,431	150,525,663	154,441,445	152,302,540	151,620,327
33. Average During Period Based Upon Lines 31 and 32	129,660,638	143,387,547	152,483,554	153,371,993	151,961,434
Depreciation Expense—					(Year 1933)
34. At 4% of Line 33	5,186,426	5,735,502	6,099,342	6,134,880	6,078,457

NOTE—Depreciation Expense on Station Installations, Interior Block Wires and Drop Wires (Lines 5-7 and 22-24) has been allowed as charged on the books to Maintenance Acct. 607—Station Removals and Changes. Depreciation Expense on General Store Equipment, General Stable and Garage Equipment and General Tools and Implements (Lines 8-10 and 25-27) has been allowed as charged on the books to Maintenance Expenses and Gross Additions to Plant. Therefore, these items are treated above as Non-Depreciable for purposes of computing the specific allowable depreciation expense chargeable to Acct. 608—Depreciation of Telephone Plant and Equipment.

Prior to the re-classification of accounts to conform with the revised I. C. C. regulations effective January 1, 1933, specific changes in Drop Wires (Lines 7 and 24), and undistributed construction expenditures (Lines 11 and 28) were not available from the record, and therefore, have not been considered in the above computations.

*Indicates red figures.

The amounts on Lines 17 and 34 are forwarded to Appendix "F", Lines 10 and 29.

APPENDIX L

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

BASIS OF INTERSTATE AND INTRASTATE ALLOCATIONS FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE.

	1925		1926		1927		1928	
	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate
Valuation								
1. Total Property	2.81552%	97.18448%	3.10771%	96.89229%	3.84204%	96.15796%	4.27597%	95.72403%
Revenues								
2. Exchange Service Revenues	1.11547%	98.88453%	1.14462%	98.85538%	1.21741%	98.78259%	1.22261%	98.77739%
3. Toll Service Revenues	11.23491%	88.76509%	11.38596%	88.61405%	12.20280%	87.79720%	12.23532%	87.76468%
4. Miscellaneous Operating Revenues	4.80362%	95.60638%	5.42327%	94.56673%	4.16569%	95.83431%	4.67220%	95.32780%
5. Licensee Revenues—Debit	2.85771%	97.14229%	3.04000%	96.96000%	3.23000%	96.77000%	3.37102%	96.62898%
6. Net Non-Operating Revenues	16.60906%	83.39094%	27.58787%	72.41213%	66.87833%	33.12167%	57.63816%	42.36184%
Expenses								
7. Current Maintenance Expenses	2.45677%	97.54323%	2.76813%	97.23187%	3.14391%	96.85609%	3.29655%	96.70345%
8. Depreciation of Tel. Plant and Equip.	2.78127%	97.21873%	2.97288%	97.02712%	3.46989%	96.53011%	3.78570%	96.21430%
9. Traffic Expenses	3.57894%	96.42106%	3.89936%	96.10064%	4.29704%	95.70296%	4.47149%	95.52851%
10. Commercial Expenses	3.13213%	96.86787%	3.28496%	96.71504%	3.67148%	96.32852%	4.03404%	95.96596%
11. General and Miscellaneous Expenses	2.95997%	97.04003%	3.27000%	96.73000%	3.82996%	96.17002%	4.15883%	95.84117%
12. Uncollectable Operating Revenues	3.06387%	96.94613%	3.29000%	96.71000%	3.48000%	96.52000%	3.60558%	96.39447%
13. Taxes Assignable to Operations	2.72836%	97.27164%	2.86136%	97.13865%	3.52844%	96.47156%	3.92022%	96.07978%
14. Rent Deductions	4.84909%	95.15091%	5.29356%	94.70644%	7.58333%	92.46665%	8.48018%	91.56982%
15. W. E. Co. Excess Profits—Credit								

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

BASIS OF INTERSTATE AND INTRASTATE ALLOCATIONS FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE—CONCLUDED.

	1929		1930		1931		1932		1933
	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate	Interstate	Intrastate	
Valuation									
1. Total Property	4.74851%	95.25149%	4.95285%	95.04715%	5.55129%	94.44871%	5.36561%	94.63439%	
Revenues									
2. Exchange Service Revenues	1.29078%	98.69222%	1.29591%	98.70409%	1.35540%	98.64460%	1.14950%	98.85050%	
3. Toll Service Revenues	12.17252%	86.82748%	12.10806%	86.89194%	12.91621%	86.08379%	12.08514%	87.91486%	
4. Miscellaneous Operating Revenues	20.71110%	69.28890%	26.29338%	73.70662%	31.96198%	68.03802%	31.75707%	68.24293%	
5. Licensee Revenues—Debit	3.73000%	96.27000%	3.49000%	96.51000%	3.81000%	96.19000%	2.80000%	97.20000%	
6. Net Non-Operating Revenues		100.00000%		100.00000%		100.00000%		100.00000%	Same Percentages Used as for 1932
Expenses									
7. Current Maintenance Expenses	3.48588%	96.51412%	3.13026%	96.86974%	3.13050%	96.86950%	2.75396%	97.24704%	
8. Depreciation of Tel. Plant and Equipment	4.29229%	95.70771%	4.80549%	95.69451%	4.82256%	95.17745%	4.51320%	95.48680%	
9. Traffic Expenses	4.98788%	95.01217%	5.01835%	94.98165%	5.41812%	94.58688%	4.85801%	95.14199%	
10. Commercial Expenses	4.81189%	95.18811%	4.55564%	95.44436%	4.52562%	95.47438%	3.24141%	96.75859%	
11. General and Miscellaneous Expenses	4.58004%	95.41996%	4.68000%	95.32000%	4.94000%	95.06000%	4.80000%	95.20000%	
12. Uncollectable Operating Revenues	4.85000%	95.15000%	4.52000%	95.48000%	4.81000%	95.19000%	4.14000%	95.86000%	
13. Taxes Assignable to Operations	4.51408%	95.48592%	4.86751%	95.13249%	5.10650%	94.89350%	4.48778%	95.52222%	
14. Rent Deductions	9.11909%	90.88091%	8.42887%	91.57113%	8.26492%	91.73508%	4.75709%	95.24291%	
15. W. E. Co. Excess Profits—Credit			8.76163%	91.23837%	4.06006%	95.93994%	3.67949%	96.32051%	

NOTE:
The Above Percentages Were Computed from the Following Information Furnished by the Company:—
Brett Exhibit No. 1.
Eide Exhibit No. 8.
Supplemental Data Furnished with Letter from Karl Burr Dated September 20, 1933.
Statement No. 7 Furnished June 14, 1933.

APPENDIX M

THE OHIO BELL TELEPHONE COMPANY—FORMAL CASE NO. 3307

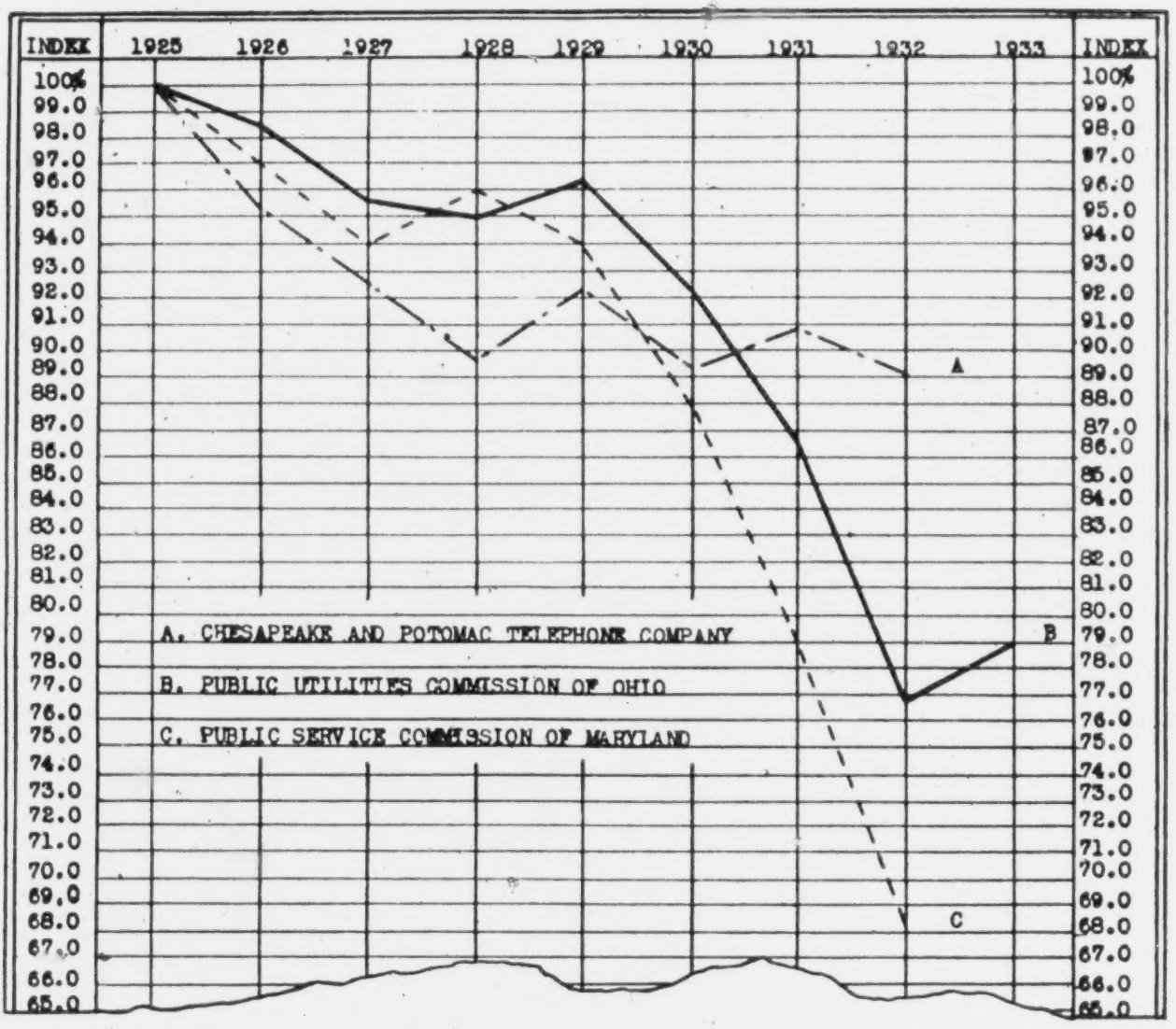
RATE STUDY FOR EACH YEAR FROM 1925 TO 1933, BOTH INCLUSIVE

	Realized Return as Found by Comm'n			Return Considered as Fair by Commission		Excessive Return as Found by Commission	
	Valuation Appendix "A" & "B"	Net Income Appendix "F"	Rate of Return	Rate	Amount	Rate	Amount
Total for Ohio							
1. Year 1925	$96,422,276	$8,681,822	9.00%				
2. Year 1926	105,061,860	9,500,571	9.05%				
3. Year 1927	115,473,043	10,214,020	8.85%				
4. Year 1928	127,886,107	10,969,022	8.58%				
5. Year 1929	141,483,956	11,567,856	8.18%				
6. Year 1930	153,274,508	11,511,831	7.51%				
7. Year 1931	153,810,108	11,712,432	7.61%				
8. Year 1932	141,202,004	8,652,192	6.13%				
9. Year 1933	133,408,379	7,347,798	5.51%				
10. Average	$129,776,915	$10,017,505	7.72%				
Interstate							
11. Year 1925	$2,714,788	$299,651	11.04%				
12. Year 1926	3,264,086	335,344	10.27%				
13. Year 1927	4,436,521	454,853	10.25%				
14. Year 1928	5,468,372	474,480	8.68%				
15. Year 1929	6,718,380	670,919	9.99%				
16. Year 1930	7,591,456	560,744	7.39%				
17. Year 1931	8,538,445	610,014	7.14%				
18. Year 1932	7,576,349	394,446	5.21%				
19. Year 1933	7,158,173	388,566	5.43%				
20. Average	$5,940,730	$465,446	7.83%				
Intrastate							
21. Year 1925	$93,707,488	$8,382,171	8.95%	7.0%	$6,559,524	1.95%	$1,822,647
22. Year 1926	101,767,774	9,165,227	9.01%	7.0%	7,123,744	2.01%	2,041,483
23. Year 1927	111,036,522	9,759,167	8.79%	7.0%	7,772,557	1.79%	1,986,610
24. Year 1928	122,417,735	10,494,542	8.57%	7.0%	8,569,241	1.57%	1,925,301
25. Year 1929	134,765,576	10,896,987	8.09%	7.0%	9,433,590	1.09%	1,463,847
26. Year 1930	145,683,047	10,951,087	7.52%	6.5%	9,469,398	1.02%	1,481,689
27. Year 1931	145,271,663	11,102,418	7.64%	6.5%	9,442,658	1.14%	1,659,760
28. Year 1932	133,625,655	8,257,746	6.18%	5.5%	7,349,411	.68%	908,335
29. Year 1933	126,250,206	6,959,232	5.51%	5.5%	6,959,232	.....	.....
30. Average	$123,636,165	$9,552,059	7.71%	6.5%	$8,075,484	Total	$13,289,172

APPENDIX N

THE OHIO BELL TELEPHONE COMPANY - FORMAL CASE NO. 3307

COMPARISON OF COMPOSITE TRENDS DEVELOPED IN THIS CASE (NO. 3307) WITH COMPOSITE TRENDS DEVELOPED IN THE CASE OF THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND (NO.3424)



PERCENTAGES

* A.	100.0%	95.3%	92.7%	89.6%	92.2%	89.1%	90.8%	89.1%	
B.	100.0%	98.7%	95.7%	95.0%	96.3%	92.2%	86.6%	76.8%	79.1%
* C.	100.0%	97.0%	94.0%	96.0%	94.0%	88.0%	79.0%	68.4%	

Note:-

In applying the trends in this case, the percentages on Line "B" above, which are all based upon 1925, have been used in computing the following percentages which reflect the trend for each individual year based upon investment at the end of the preceding year. 1926, 98.73% of 1925; 1927, 96.97% of 1926; 1928, 99.20% of 1927; 1929, 101.45% of 1928; 1930, 95.65% of 1929; 1931, 93.95% of 1930; 1932, 88.71% of 1931 and 1933, 102.96% of 1932.

Authorities used in computing the percentages on Line "B" above are explained in the opinion.

* These percentages have been recomputed for comparative purposes, using 1925 as 100%.